MONTANA LEGISLATIVE HISTORY

Chapter 463 19 75

Bill H _____ S 310 Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources and Fish and Game		
Hearing Date(s)	Mar 11	✓ C	Hearing Date(s)	Feb 22	✓ C
	Mar 18	✓ C		Feb 25	✓ C
		C			C
		C			C
Date Out	Mar 18	✓ C		Feb 25	✓ C

BEST COPY AVAILABLE

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LC 0249

Senate BILL NO. 310

INTRODUCED BY Greely Halbakken Tom Faskender
Turnage Ryan Roberts Murphy LYNCH Watt
Siebel Devine Healy

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975".

Section 2. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved.

Section 3. Definitions, as used in this act: (1) "Stream" means any perennial flowing stream, or river, its bed and immediate banks.

INTRODUCED BILL

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section [2 of this act].

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

Section 4. Notice of project. (1) A person planning to engage in a project shall present written notice of the

SB 310

project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

Section 5. Procedure for considering projects -- team. (1) The supervisors shall receive all notices for projects within their district and shall send, within five (5) days of receipt, one (1) copy to the department. The department shall notify, within five (5) days of receipt of notice, the supervisors of their interest in the project.

(2) The supervisors shall promptly examine and investigate each notice of a proposed project received under the provisions of this act. If the supervisors determine the plans and specifications furnished with the notice to be technically insufficient, the supervisors shall notify the applicant, and they may render aid in preparing other plans and specifications.

(3) The supervisors shall call the team together within twenty (20) days of receipt of notice, at their request or at the request of the department or the applicant for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection or the preparation of the plan.

(4) Each member of the team shall recommend, in writing, within fifty (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations, and notify the applicant and team members within sixty (60) days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within five (5) days of receipt of the supervisors' decision, that an arbitration panel, as provided in section [6 of this act] be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with any recommendation or alternative plan, by the supervisors to the applicant, the applicant, within fifteen (15) days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project prior to the expiration of this fifteen (15) day period unless written permission is given by all team members.

(8) The supervisors may extend the request of any team

member, the time limits provided in section [5 (4) and (5) of this act] where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed one (1) year from date of application. The applicant shall be notified, within sixty (60) days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors.

Section 6. Arbitration panel -- costs. (1) The arbitration panel shall consist of three (3) nonpartisan members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it.

(2) Cost of the arbitration panel, computed as for jurors' fees under section 25-401, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

Section 7. Vested water rights preserved. This act shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

Section 8. Emergencies -- procedure. (1) The provisions of this act shall not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for any project under this section shall notify the supervisors in writing within fifteen (15) days of the action taken as a result of an emergency.

(2) The supervisors shall send one (1) copy of the notice, within five (5) days, to the department.

(3) A team, called together as described in section [5 (3) of this act], shall make an on-site inspection and individual written reports to the supervisors within thirty (30) days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within any five (5) year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to that emergency action.

(5) The supervisors shall determine the feasibility of the more permanent solution ascertained by each team member, and select the most feasible. They shall recommend, within thirty (30) days, that the person put the selected solution into effect within a reasonable period of time, as

SB 310

determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in section [6 of this act], be appointed to hear the dispute and make a final written decision thereon.

Section 9. Modification of plan -- cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

Any of the involved entities may withdraw or modify required modification of the project within ten (10) days after the decision.

Section 10. Application of flood plain management act. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 89, chapter 35, floodway management and regulation where designated flood plains or designated

floodways have been established in accordance with that chapter.

Section 11. Rules -- minimum standards. (1) By July 1, 1975, the board of natural resources and conservation in cooperation with the state fish and game commission shall adopt rules setting minimum standards and guidelines for the purposes of this act.

(2) By January 1, 1976, the supervisors shall adopt, by resolution and after a public hearing, rules and standards for the review and approval of a project which shall meet or exceed the minimum standards set by the board under subsection (1) of this section.

Section 12. Judicial review. Any final action under this act may be appealed within thirty (30) days to the district court as provided in the Montana Administrative Procedure Act.

Section 13. Public nuisance. Except for emergency action, stream channel activity engaged in by any person without prior approval, as prescribed in this act, is declared a public nuisance and subject to proceedings for immediate abatement.

Section 14. Penalty -- misdemeanor -- restoration. (1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than

twenty-five dollars ($25) nor more than five hundred dollars ($500), for each day that person continues to physically alter or modify the stream, and in addition that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Any person or entity who violates the time provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars ($5) per day.

Section 15. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

SB 310

6

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME
MONTANA STATE SENATE

February 22, 1975

The fifteenth meeting of the Natural Resources and Fish & Game Committee was called to order by Chairman Flynn at 9:30 a.m, Room 405, in the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Smith who was excused.

CONSIDERATION OF SB 310: Provide for a policy of preserving the natural or existing shape, form and course of streams to activities of private persons or organizations; and in doing so to keep soil erosion and sedimentation to a minimum in the state of Montana; and to provide for penalties and enforcement.

Senator Greely, sponsor, proposed amendments to SB 310. He introduced the following witnesses to testify in support of his bill:

Mr. S. J. Seidensticker, rancher from Twin Bridges, said he and others have been trying to introduce some legislation dealing with good land and preservation. Our main objections is to exercise local control for our local problems. Mr. Seidensticker said he supported this bill with Senator Greely's proposed amendments.

Mr. Peter Jackson, Madison County, stated that because Montana consists of 70% range land, there is a basic need for supplemental feeding. We depend on our streams for irrigation. Some method must be developed where the ranching industry must have a way to protect Montana's water in all circumstances. Mr. Jackson believes that if things are done as they are now, we will soon be in financial trouble. He feels this bill will continue to work in regards to protecting our streams.

Mr. Tom Daniel, Independent Insurance Agent from Butte, said that he was one of the sportsmen involved with introducing this piece of legislation. Mr. Daniel stated that since conservation districts are already involved with this subject of water preservation, it would be perfect for them to regulate this bill. Mr. Daniel feels this bill has been drafted in very good faith.

Ms. Urma Clark from Livingston, supports this bill for many reasons. She said this bill will be valuable because it will get things together. Ms. Clark felt the Yellowstone River should be studied by a special group. She presented some problems that had taken place in the past years. She supports this bill with the amendments.

Mr. Robert Brown, mayor of Missoula, told the committee of an experience that took place in Missoula two years ago. It concerned a ditch company who practiced

a useless endeavor. Mr. Brown feels a ditch company should go through a planned procedure and get approval before they do anything with land aside a river.

Mr. Doug Allen, County Commissioner from Madison County, spoke in favor of the bill. (See Attachment #1.)

Mr. Elbie Bellon, representing the Baverhead Sportsmen's Association from Dillon, said the association sees a definite need for a law controlling alternation of our streams and rivers. (See Attachment #2.)

Senator Frank Hazelbaker, co-author of the bill, stated the need for this bill.

Mr. Gene Spilde introduced the opponents of the bill:

Mr. Conrad Fredricks, Sweetgrass County Preservation Association, said he felt the bill creates some problems in draftsmenship. He said section 2 is not specific and section 3 is too broad. In section 6 under the arbitration panel, how would the word "non-partisan" be defined? Mr. Fredricks said this bill still gives control to the Fish and Game Department even though Senator Greely proposed an amendment to solve this problem in section 11. Mr. Fredricks said that control should be left completely up to the local level. Mr. Fredricks feels that in section 13, stream channel activity should be defined. Mr. Fredricks summed up his testimony by saying he objects to the wording and interpretation of SB 310.

Mr. Franklin Grosfield from Sweet Grass County, stated that the bill is not workable as it is now written. He said it is impossible to have state wide rules by the time this bill goes into effect. Passage would create an avalanche of work for conservation districts. Financing will also be a problem. Mr. Grosfield feels that this bill would be tinkering with private property rights, but he admitted that he agreed with the bill's philosopy.

Mr. Teddy Thompson also felt that Montana doesn't have the manpower to carry out with this project. (Mr. Thompson is of the Sweetgrass County Preservation Association.)

Mr. John Fox said he opposed the bill because the Fish and Game Department has not been taken out.

Mr. Largey McDonald, Anaconda Company, said the company is not against the preservation of streams, but said it interferes with their supply of water. Between Silver Lake and Meyers Dam, a lot of snow and water accumulates during the winter and early spring months. The company therefore has to keep this area clear. This bill would require the company to obtain a permit each time they cleared the area.

Mr. Thos. E. Lane, Park County Legislation Association, also a rancher, said he did not want to pay for such a state project that told him how to carry out an effective job; otherwise he supports stream preservation.

Mr. John Yost, rancher from Sweetgrass County, spoke in opposition of the bill. (See Attachment #3.)

Mr. Ted Lucas, rancher, stated that the bill eliminates provisions needed for exclusions in this bill. He feels this bill is not workable.

Mr. Maynard Smith, rancher from Beaverhead County, gave his reasons for opposing this legislation. (See Attachment #4.)

Mr. Mons Teigen, Montana Stockgrowers Association, referred to the broad definition of what constitutes a stream. Because the bill would apply to every natural stream in Montana, it will take an army of people to implement this project.

Senator Greely summarized the intent of his bill. He said he was very much concerned with the problems landowners have with each other. He agreed with Mr. Fredricks comments in reference to page 8, section 13, line 18. He proposed and amendment to strike "stream channel activity" and insert "a project". Senator Greely feels this act is flexible enough to recognize different problems. He likewise feels procedures can be set up to handle minor irrigation problems. There is a need for some minimum standards that will apply statewide to prevent destruction of our streams. Senator Greely said that time limits written in the bill could be lengthened.

CONSIDERATION OF SB 279: To provide for a fee increase in the resident conservation license.

Senator Joe Roberts, sponsor, stated briefly the intent of this bill. He introduced Fletcher Newby, Deputy Director of the Montana Fish and Game Department.

Senator Roskie asked if the state would qualify for matching funds. Mr. Newby answered his question with a yes.

CONSIDERATION OF HB 401: Making the governor's representative on the Environmental Quality Council a nonvoting member and revising the terms of office of council members.

Representative Tom Hager, sponsor, pointed out how this bill differs from the present law. One difference included is that the governor's representative would be unable to vote.

Ms. Harriet Marble, said she does not favor any attempts to change the public member's selection nor does she favor removing the public members from the Council. In her opinion, there is no problem with the present method of selection of members nor are there any problems with the citizens presence on the Council. Ms. Marble said the Council mainly researches and does studies requested by the legislature.

Representative Hager commented that public impact is very important.

DISPOSITION OF SB 279: Senator Roskie moved SB 279 DO PASS. Senator Manley seconded the motion; it carried unanimously.

ROLL CALL

Natural Resources and Fish & Game COMMITTEE

44th LEGISLATIVE SESSION -- 1975

Date 2-22-75

NAME	PRESENT	ABSENT	EXCUSED
FLYNN, Elmer, Chairman	X		
COLBERG, Richard A., V. Ch.	X		
JERGESON, Greg	X		
MANLEY, John E.	X		
WATT, Robert D.	X		
GALT, Jack E.	X		
ROSKIE, George F.	X		
SMITH, Edward B.			X

Each day attach to minutes.

SENATE NAT'l RESOURCES & COMMITTEE
FISH & GAME
VISITORS' REGISTER

BILL ~~SB 310, 279~~ and HB 401

DATE 2-22-75

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Larry Schoonen	Butte T.U.	SB 310	✓	
John Rich	" "	"	✓	
Norman Peterson	Beaverhead Sptmn Assn	"	✓	
Ellie Bellon	" " "	"	✓	
Donald R Raichmuth	Consaltant F&G	310	✓	
E. A. Keyes	Gallatin Sportsmen	310	✓	
Delmar K. Clarke	Beaverhead Sptsmen	310	✓	
Chester L Hagedorn	Beaverhead Sportsmans Assn	310	✓	
Bruce J. Rehwinkel	Mont. State Univ.	310	✓	
Frederick A Nelson	Bozeman, MT.	310	✓	
Harold R. Stevenson	Bozeman MT	310	✓	
David C. Cobb	Bozeman, MT	310	✓	
Frank Vaget	Bozeman Mont	310	✓	
William Geer	Bozeman MT	310	✓	
Ellen Garrity	Mont Div AAUW	310	✓	
Robin Bonneau	Bozeman Mont	310	✓	
Fred Nagel	Gallatin Sportsmans	310	✓	
Bob Lent	Butte MT	310	✓	
David Brenneman	Missoula Trout Unlimited	310	✓	
Bill Gardner	Mont St. Univ	310	✓	
Harold W. Hall Jr	Senate	310	✓	
Dennis Workman	Livingston	310	✓	
Marilyn Grosfield	Big Timber	310		X
Carolyn Greene	Melville	310		✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE NAT'L RESOURCES COMMITTEE

BILL SB 279, SB 310 HB 401 AND FISH & GAME VISITORS' REGISTER DATE 2-22-75

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
R. H. Burns	Farm Bureau	310		X
Thos. E. Law	Park County Legislative Com.	310		X
Louis Grosfield	self	310		X
Evelyn Grosfield	self	310		X
Lydia Yost	self	310		X
Hermit Anderson	Rancher			X
John E. Yost	Rancher	310		X
Franklin Grosfield	Conservation Dist.	310		X
James E. Handley	Trout Unlimited	310	X	
Nora Hanson	Farm Bureau	310		X
Douglas Allen	Mad. Co.	310	X	
Vern Buck	Rancher			X
Paul Fricking	Rancher			X
Lee Sargent	Rancher EIC		X	
Harriet Marble	self	401		X
John Green	Self			X
Peter Jackson	MACD	310	X	
S.J. Seidenstricker	MACDA rancher	310	X	
Leonard Peterson	MACD	310	X	
Dick Wolfenden	Trout Unlimited	310	X	
Kyle Stephenson	Izaak Walton	310	X	
LARRY Rust	Salesman	310	+	
Erik R Jorgensen	Machinist	310	X	
JOE L. JANY	Teacher / grad student	310	X	
Dwane Scott	MORTICIAN	310	X	
Dick Capp	TRUCK DR HIGHWAY DEPT	310	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

12

SENATE NAT'L RESOURCES & COMMITTEE
FISH AND GAME
VISITORS' REGISTER

BILL SB 310, 279 and HB 401

DATE 2-22-75

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
E. Maynard Smith	Self	310		X
Morris Tegjon	Mont Stockgrowers	"		X
Holly R. Smith	Self	310		X
Ursula Wells	Self	310	X	
Robert R. Brown	City of Missoula	310	X	
Ted Lucas	Self			X
Robin Tawney	Env. Info. Center	310	X	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

13

Testimony on Sen ate Bill 310-Senate Committee on Natural Resources, Feb. 22, 1975
(Douglas Allen-Rancher-County Commissioner, Madison County)

Considering the alternatives, and having participated in the early dr afting of Senate Bill 310, I am in favor of its passage ########## I have one suggestion, involving definitions that I feel needs amendment. On page one, Section 3, part 1, STREAM, Means any perennial flowing stream or river, its bed and immediate banks. I believe "immediate banks" should be more closely defined, to eliminate dispute, and I do not think that tiny streams such as from springs, incapable of supporting fish life, should be included, even if perennialy flowing, present water laws cover these all too well, and the Fish and Game certainly should have no interest here. Otherwise, I am in favor of its passage as introduced. Any amendments, other than these could certainly change my stand. It has been prepared as a compromise between all parties involved. It allows the participation of the various interests concerned in the use and preservation of our streams. I am a strong advocate of free enterprise and the private ownership of land, and have strong suspicions that some of those supporting previous legislation, notably HB 474 as introduced last session, are strong and violent enemies of private land ownership, and were using this bill to further this political philosophy. The ultimate goal of these people is communism and the public ownership of all land. It is not fair to say all who supported it have this objective, but they unwittingly aid it. The passage of laws to achieve their goal is an incipient method, outright revolution would be easier to cope with.

I can give general support to this bill, because it reduces the powers of the agencies, involved most notably the Fish and Game Department. I am a firm believer in keeping control of our government in the hands of elected representatives of the people. This bill would also place fiscal responsibility for modifications on those who require it, if arbitration were to favor such modifications. I would much prefer no laws controlling individuals rights to use their private land, but feel this bill would protect them as much as any compromise among all parties could. Close observation of its effects should be made, if it becomes law, with an eye to revision or repeal, if the results are objectionable.

Douglas Allen
Silver Star, Montana

ATTACHMENT #1

Beaverhead Sportsmen's Assoc. ATTACHMENT #2

Mr. Chairman - Committee members - and concerned citizens-

My name is Elbie Bellon and I am representing the Beaverhead Sportsmen's Association from Dillon and surrounding areas. We are here to give support to SB 310 as we see a definite need for a law controlling alteration of our streams and rivers. Our club was one of if not the only sportsmen's club not to support the proposed stream preservation bill in 1974. The fact is that after meeting with local ranchers from the Big Hole, Beaverhead, and Ruby Rivers we were very much against last year's legislation. We felt that a law of this nature should have more local control and that it should not be administered by the Fish & Game Dept. Shortcomings in last year's bill and its many amendments caused us to decide to get together with local ranchers, other sportsmen's groups and the Fish & Game Dept. to formulate a new proposed bill for 1975. Our club met with Mr. Seidensticker and other ranchers from our area, the Butte chapter of Trout Unlimited, and the Skyline Sportsmen's Association from Butte to begin work on what has now become SB 310. After much discussion and deliberation we formed the original draft of principals that we thought were necessary to have a strong but workable law. SB 310, proposed by Senators Greely, Hazelbaker, et al, was formed through the cooperative efforts of ranchers and sportsmen, and we feel it imperative that this bill be passed in its original form. The Beaverhead Sportsmen's Association is sure that any amendments such as those proposed by the Montana Stockgrowers' Association would only detract from this bill and form another "do nothing" bill such as we opposed last year.

This bill was written by the people it will affect for the necessary preservation of our streams and rivers.

Elbie Bellon 2/22/75

ATTACHMENT #3

TESTIMONY ON SENATE BILL 310
SENATE NATURAL RESOURCES COMMITTEE
Saturday, February 22, 1975

Mr. Chairman Members of the Committee, my name is John Yost. I am a rancher from Sweetgrass county and a member of the Conservation District. I am here today to speak in opposition to SB 310.

After reading the bill several times, which it took to attempt to understand the general provisions contained therein, we do not see a need for this Legislature to take action on this issue at this time.

I wish to emphasize the fact that I am not for passing bills simply for the purpose of attempting to second guess the federal government in establishing standards for the State. We also wish to add that as far as we can tell the bill would not necessarily fit the criteria established by the federal government and would, therefore, preclude the bill from becoming operable. Quite frankly, we are not sure what those standards are. Therefore, we see no immediate reason for enacting a bill of this kind.

In addition to my concern stated, I wish to express our concern as to what appears to embroil the individual involved in a maze of red tape which would be very difficult to work through. Quite frankly, in my opinion, there are too many people and agencies involved for it to be operated in an efficient manner.

If the federal government is pushing us for some kind of criteria as far as stream preservation and sedimentation is concerned, then we might as well wait until they impose whatever minimum criteria they wish before we embark on such an endeavor.

I would also raise a question relative to how SB 141 might affect the administration of this bill. We are not sure it will have any effect. We would raise the question as to whether or not, if the conservation districts are to receive federal funds, the federal government would require them to administer those funds in such a manner which would es-

sentially negate the contents of this bill; that is, impose a federal criteria instead of state criteria?

Mr.Chairman, Members of the Committee, I believe the bill is unnecessary at this time. I would ask you to not concur with SB 310.

February 21, 1975

ATTACHMENT #4

Senate Natural Resources Committee
Senator Elmer Flynn, Chairman
Committee Members

I wish to express my opposition to Senate Bill 310, The Streambed Preservation Act, for the following reasons:

1) The actual rules and standards under which this act will operate are not spelled out by the legislature in this law, but are dictated by two state government agencies, the Departments of Fish and Game and Natural Resources. Their decision on minimum rules and standards must be accepted by the local Soil Conservation District. Thus the law is actually written by state agencies over whom the citizen has no control and who are not elected officials. The interests of water users are not represented in any way on this rule making group.

2) The definitions are very vague, particularly those of "stream" and "project".

3) The length of time between applying for project approval and possible final decision on that approval is far too long. According to my figuring, it could amount to as much as 215 days and extensions may be granted.

4) The definition of an emergency is also vague and more than one in a five year period is subject to question. In irrigating from a river such as the Big Hole, which is what I must do, it is difficult to predict what sort of an emergency may arise requiring some sort of work in the river, other than the problem of low water in the late summer. It is possible that one could arise each year.

I would like to point out that the Big Hole River is subject to great fluctuations between high and low water. At low water there is no other way to get irrigation water except by use of machinery to divert it into your ditch. I do not know what permanent structures would be possible that would not be subject to damage by the extremely high water in late spring. The cost of these structures would be excessive to the rancher and many who irrigate out of the Big Hole do not have the means to finance them.

I feel that the ideas proposed in this bill should be further studied and that changes in methods of diverting water from a river like the Big Hole should come - but they should be a long range project over a period of years.

I respectfully request that you do not pass this bill as it is written.

E. Maynard Smith
Glen, Montana

E. Maynard Smith

Projects Reviewed Under the Stream Preservation Act

As an indication of current stream alteration activity, 161 projects were reviewed under the Stream Preservation Act in 1974. Since the Act's inception in 1963, 776 projects have been reviewed.[4] The Act does not yet apply to private landowners.

The damage caused by stream alteration projects is often irreversible. In some cases, repairing a channel alteration could cause even more damage and it would not be practical.[5]

References

1. Alvord, Wm. and J.C. Peters. 1963. Channel changes in thirteen Montana streams. Fisheries Division, Montana Fish and Game Commission, Helena.

2. Miller, Bill and Norm Peterson. 1974. We're losing our streams! MONTANA OUTDOOR, January/February. pp. 6-10.

3. State of Montana, Department of Natural Resources and Conservation, and cooperating agencies. 1973. A study of erosion and sedimentation in the Montana portion of the Clarks Fork, Yellowstone River Basin. Prepared for the 1973 Montana Legislative Assembly. pp. 37-38.

4. Ralph W. Boland, Assistant Administrator, Environment and Information Division, Montana Department of Fish and Game. Personal Communication of February 20, 1975.

5. Boland, R. W. 1974. Was your stream gone when you got there? MONTANA OUTDOORS, January/February. pp. 2-5.

Information compiled by Sweet Grass County Preservation Group.

The following is number of ditches used to divert water from live streams in Sweet Grass County, It is estimated that a large percent of these would require yearly work after high water.

Sweet Grass Creek	57
Otter Creek	41
American Forks	40
Cayuse Creek	12
Big Timber Creek	36
Swamp Creek	25
Little Timber Creek	15
Yellowstone River	12
Boulder River	43
Bridger Creek	9
Ten Mile	12
Deer Creeks	26
	328

56,383 Acres S. G. Co. 1950

These figures do notinclude ditches from smaller creeks to numerous to count. Inteminent Creeks and Unnamed Coulees.

Senate Bill 310 would have direct effect on all 328 headgate diversions when the water level drops to a low level after high water. Every rancher and ditch company has to get water out for irrigatiog crops during the months of July and August. This work has to be done on very short notice and time does not permit the affected parties to go to a Government bureaucracy for permission to get water from the river into the headgate. S. B. 310 has a provision to make these headgate works permanent installations. This cannot be done in cases where rivers will rise up to twelve feet or more during the spring runoff. Any permanent installation would impede the water flow and could cause damage elsewhere along the river course.

We, who are irrigating land cannot have our work tied up with the red tape which S. B. 310 will be sure to create.

Therefore, we, the members of the Sweet Grass County Preservation Association, would urge you Mr Chairman and members of the Senate Natural Resourse Committee to vote "no" on Senate Bill 310. Thank you

2

STATE OF MONTANA

Environmental Quality Council

JOHN W. REUSS
EXECUTIVE DIRECTOR

CAPITOL STATION, HELENA, MT. 59601

GOV. THOMAS L. JUDGE
(OR DESIGNATED REPRESENTATIVE)
G. STEVEN BROWN

SENATE MEMBERS
SEN. ELMER FLYNN, CHAIRMAN
SEN. GEORGE DARROW
SEN. GEORGE MCCALLUM
SEN. GORDON MCGOWAN

HOUSE MEMBERS
REP. A. L. AINSWORTH
REP. DOROTHY BRADLEY
REP. LARRY FASBENDER
REP. THOMAS O. HAGER

APPOINTED MEMBERS
MR. THOMAS J. LYNAUGH
MRS. HARRIET MARBLE
MR. CALVIN S. ROBINSON
DR. WILLIAM G. WALTER

February 20, 1975

Prepared For: Senate Committee on Natural Resources and Fish and Game

Prepared By: Legislative Unit, Environmental Quality Council

SENATE BILL 310

Summary

This legislation is intended to preserve Montana rivers and streams while minimizing soil erosion and sedimentation to accomplish these objectives. Senate Bill 310 proposes to prohibit all unauthorized development projects along rivers and streams. A board of supervisors will be established by this legislation to serve as a regulatory agency, while a team selected by the supervisors will serve in an investigatory capacity.

Notice of a proposed project must be given, prior to its commencement, to the board of supervisors who will promptly examine and investigate each such proposal. Investigation consists of an on-site inspection of the proposed project conducted by the team. Each member of the team, within 50 days of the application, shall recommend to the supervisors denial, approval, or modification of the proposed projects. The supervisors may sustain, overrule or modify team recommendations, but they are required to notify the applicant of their decision within 60 days of the initial application. A dispute resulting from the supervisors decision may be submitted to an arbitration panel. Modification of the original plan may result in an assignment of costs based on a percentage determination of benefit derived from the modification by the public. In any event, no work on a project may take place without the written consent of the supervisors.

The provisions of this act shall not be interpreted to impair existing water rights, and shall not apply to those actions "which are necessary to safeguard life or property, including growing crops, during periods of emergency." Approval for proposed projects does not in any way relieve the applicant from complying with existing flood plain regulations.

The board of Natural Resources and Conservation and the state Fish and Game Commission shall establish minimum standards and guidelines for the purposes of this act. All final action under this act may be subject to judicial interpretation as provided in the Montana Administrative Procedure Act. Stream channel modification except as authorized by this act, shall be considered a public nuisance and subject to proceedings for immediate abatement. Violations of this act will be considered a misdemeanor, and those convicted of violation will be subject to a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for each day in violation.

Analysis

When a stream is channelized and straightened, the slope is increased and the distance the river flows is shortened. The water velocity increases and the stream has more energy to do work. The first response of a stream to an increased gradient is to degrade or erode the bank upstream and deposit or agrade downstream. Stream alteration projects are often ill-advised, not only from the standpoint of fish habitat destruction and stream loss, but also from subsequent adverse effects on adjacent stream sections; damage results not only to land adjacent to the stream on which the project was accomplished, but also on neighboring land both upstream and downstream.

1962 Channel Change Study[1]

In 1962 the Montana Fish and Game Department inspected 13 rivers and streams in widely scattered areas of the state and found that a total of 138 miles of naturally meandering stream channel were lost and replaced by 69 miles of relocated stream channel. One-third of the total length of the streams surveyed (250 of 768 miles) had been altered from their natural condition. There were nearly three alterations per stream mile and the average length of a channel alteration was 664 feet. The natural length of stream channel was decreased by nearly 10 percent.

1973 Fish and Game Survey[2]

In the summer of 1973 the Montana Fish and Game Department surveyed sections from six streams--Beaver, Lolo and Rock Creeks, and the Big Hole, Jefferson and Ruby rivers--in order to estimate the magnitude of present-day alterations. In 160 miles of stream studied, 24 miles--approximately one-sixth of the channel--were altered with dragline or bulldozer. Forty-four miles of streambank were lined with steambed gravel pushed up from the channel, blanket rock riprap, jetties, car bodies, debris or a combination of these. Most of the channel alterations consisted of bulldozing the streambed to deepen the channel, pushing up a temporary irrigation diversion or obtaining streambed material to temporarily "stabilize" the streambank. Much of this stream alteration was quite recent and pointed to the conclusion that alteration of Montana's streams is increasing at an accelerated rate. On these six streams, private landowners (for the most part agricultural) accounted for most channel and streambank alterations.

Clarks Fork (Yellowstone) Erosion and Sedimentation Study[3]

The Clarks Fork Erosion and Sedimentation Study, commissioned by the 1971 Legislative Assembly, found that stream straightening and other channel manipulations are adding materially to the erosion problem in the drainage. Such activities, intended to correct the immediate problem, invariably influence stream hydraulics resulting in an aggravation of other erosion problems elsewhere on the stream. Shortening of stream sections produced higher stream velocities through the shortened section causing both stream and bank erosion in the altered section and in adjacent upstream and downstream sections. Bed material from these areas moves into the unaltered stream where normal velocity exists and the material is deposited. This in turn causes a rechanneling and eventual widening effect which causes further bank erosion.

February 21, 1975

My name is David Quammen. I live at 615 Ford St., Missoula. I make my living as a bartender. I have done graduate work in freshwater biology at the University of Montana.

I strongly support Senate Bill 310 for two reasons:

1) Even if channelization were an effective and reliable solution to the problems of flooding and erosion, its price would be unconscionably high. A survey of documented cases of channelization in midwestern and southern states shows that the fish population of a channelized river is often reduced between 70 and 90 percent. This is not a temporary, recoverable loss. The Blackwater River in western Missouri was channelized in 1915. Today the channelized portion has only 1/5 the fish population of the unchannelized portion. Though fish may be re-stocked, the bottom-dwelling insects and the bacteria which are indispensible to the life-cycle of those fish cannot be stocked; they are irreplaceable. The Corps of Engineers can dig canals and gutters, but they can no more make a living river than a carpenter can build a tree.

2) Limnologists and geologists agree that channelization is neither effective nor reliable: it simply does not work. A river's most stable, floodless, erosion-free course, over the long run, is its own natural, chosen streambed. Experiences such as that on Missouri's Blackwater show that channelization of one part of a river only increases the danger of flooding and erosion on the unchannelized portion downstream.

Channelization in other states has wasted too many priceless rivers, to no good end. It shouldn't happen in Montana.

MADISON - GALLATIN CHAPTER

TROUT UNLIMITED

Bozeman, Montana

February 21, 1975

The Honorable Elmer Flynn
Senate Quarters
Capitol Building
Helena, Montana 59601

Dear Senator Flynn and Committee Members:

This is to express our Chapters whole-hearted support of Senate Bill # 310.

Especially in light of some of the activities on our own Gallatin River this past fall, we feel this is a much needed piece of legislation and deserves the whole-hearted support of this committee.

Thank you.

Sincerely,

TROUT UNLIMITED

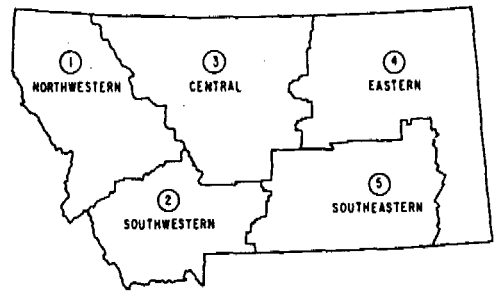
Frank Valgenti
President

pk

EDUCATION -- CONSERVATION

Montana Wildlife Federation

AFFILIATE OF NATIONAL WILDLIFE FEDERATION



21 February 1975

Senator Elmer Flynn, Chairman
Natural Resources & Fish and Game Committee
State Capitol
Helena MT 59601

Dear Senator Flynn:

Our Federation wants to be on record in support of Senate Bill 310 as it has been written and introduced. We also wish to compliment the people who worked on the bill because it shows a considerable amount of understanding for local problems and the natural forces that govern running water and its part in building fertile lands and productive trout streams.

Unfortunately, this type of legislation is often amended by people who do not understand the basic processes involved with running water. They think the natural shape of rivers and streams is inefficient because they meander back and forth across flood plains. And they think that the natural shape should be manhandled into some shape that man thinks best. That kind of thinking is now costing taxpayers upwards of $8 billion annually to manhandle rivers and streams in the United States. And flood damage is steadly mounting every year in spite of all the taxpayers money spent to stop it.

We recommend that proposed amendments to SB 310 be carefully considered in light of two recent(1973)government reports: 1)Water Policies for the Future by the National Water Commission, and 2)Principles and Standards by the Water Resources Council. These reports were published in 1973 and are attempts to study and correct mistakes made, mainly by the federal governement, in dealing with the nations streams and rivers. We think the federal government can make enough mistakes on its own, without help from the Montana Legislature

Therefore, we recommend that SB 310 be passed as it was introduced. If you feel certain amendments are absolutely needed we hope they will be considered carefully.

Sincerely,

Perry Nelson, Secretary
Sourdough Road, Route 3 Box 74A
Bozeman MT 59715

cc Seibel
Boylan

Route #1, Box 43
Ronan, Montana 59864

February 22, 1975

Senator E. Flynn, Chairman
Senate Natural Resources Committee
Room 405

Dear Senator Flynn:

We strongly support SB 310 -- Stream Preservation Bill

In some sections of the country the Soil Conservation District Supervisors have been less than diligent in protecting live streams - notably in Georgia. Therefore we would like to recommend that the Bill be amended in Section 2 (4) to include at least two citizen conservationists to represent the general public.

We urge you to recommend passage of this Senate Bill 310.

Sincerely,

Thurmen T. Trosper
Dorothy M. Trosper

NAME: Mrs. Howard Hanson DATE: Feb. 22, 1975

ADDRESS: Big Timber, Mont.

PHONE: 932-2809

REPRESENTING WHOM? Ranch owner with Farm Bureau group

APPEARING ON WHICH PROPOSAL: SB-310

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: Object to the long time from application time to approval of any project. Water is needed immediately for irrigation.

Object to the fish and game to be consulted for every project.

Bill would be difficult to administer because of the many permits and would be a burden for the supervisors.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Paul D. Fochs DATE: 2-22-75

ADDRESS: Shawmut, Mont

PHONE: 632-4437

REPRESENTING WHOM? Wheatland County Preservation Association - and Upper Musselshell Soil Conservation District.

APPEARING ON WHICH PROPOSAL: S.B. 310

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: There is too much time loss between hearing - etc. Can have complete loss of water for Irrigation and thereby loss of Crop.

Too many departments involved causing loss of time ~~&~~ ~~Sec H.~~ - gives full charge of this bill to Board of Natural Resources & Fish & Game.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES OF THE MEETING
NATURAL RESOURCES AND FISH & GAME
MONTANA STATE SENATE

February 25, 1975

The sixteenth meeting of the Natural Resources and Fish and Game Committee was brought to order by Senator Elmer Flynn, Chairman on the above date in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

Since the following bills have been considered in committee, there was no testimonies heard. Senate Bills 157, 310, 332, and 349 received the following disposition:

DISPOSITION OF SB 310: Senator Roskie distributed copies of the proposed amended copy of Senate Bill No. 310. He said a coalition of the stockgrowers, Fish and Game Department, and men from the soil conservation district drafted and agreed with these amendments. (See Attachment #1.) Senator Colberg moved to adopt Senator Greely's amendments. The motion was seconded by Senator Galt; it carried unanimously.

Senator Manley said that he still feels the Fish and Game Department should be removed entirely from the bill (any mention of it). When defining what is a department in the bill, the Fish and Game Department should be changed to the Department of Natural Resources. In Senator Watt's opinion, he felt the Fish and Game Department should be the defined department because it is the department in charge of keeping fish alive. Debbie Schmidt informed the committee of the problems that would arise if this were changed to the Department of Natural Resources.

Senator Jergeson moved that SB 310 AND AS SO AMENDED, DO PASS. The motion was seconded by Senator Colberg with Senators Manley and Galt voting against. (For amendments, see attached standing committee report.)

DISPOSITION OF SB 349: Senator Colberg felt that SB 349 was geared too much towards Butte.

Senator Galt moved that SB 349 DO NOT PASS. The motion was seconded by Senator Manley.

Senator Colberg moved a substitute motion that the bill be tabled. The motion was seconded by Senator Watt and carried unanimously.

DISPOSITION OF SB 157: Senator Roskie provided the committee with amendments to SB 157. He also proposed additional amendments to the bill. By amending page 6, section 5, line 16 following "Montana" insert "and a supervisor of a conservation

ROLL CALL

Natural Resources and Fish & Game COMMITTEE

44th LEGISLATIVE SESSION -- 1975

Date 2-25-75

NAME	PRESENT	ABSENT	EXCUSED
FLYNN, Elmer, Chairman	X		
COLBERG, Richard A., V. Ch.	X		
JERGESON, Greg	X		
MANLEY, John E.	X		
WATT, Robert D.	X		
GALT, Jack E.	X		
ROSKIE, George F.	X		
SMITH, Edward B.	X		

Each day attach to minutes

ATTACHMENT #1

Assc. of Conservation Dist.

Proposed Amended Copy of Senate Bill No. 310

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM, AND COURSE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS: AND IN SO DOING TO KEEP SOIL EROSION AND SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975".

Section 2. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. Further, it is the policy of this state to protect land and property from stream meandering and flooding; to recognize the needs of irrigation and agricultural use of the rivers and streams of the State of Montana; and to protect the use of water for any useful or beneficial purpose as guaranteed by the Constitution of the State of Montana.

Section 3. Definitions, as used in this act; (1) "Stream" means any perennial flowing stream, or river, its bed and immediate banks.

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a major physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section [2 of this act] , but does not include minor alterations necessary for the use and protection of adjacent lands.

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

Section 4. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

Section 5. Procedure for considering projects -- team. (1) The supervisors shall receive all notices for projects within their district and shall send, within five (5) days of receipt, one (1) copy to the department. The department shall notify, within five (5) days of receipt of notice, the supervisors of their interest in the project.

(2) The supervisors shall promptly examine and investigate each notice of a proposed project received under the provisions of this act to determine if the proposed project falls within the purposes set forth in Section 2. If the supervisors determine the plans and specifications furnished with the notice to be technically insufficient, the supervisors shall notify the applicant, and they may render aid in preparing other plans and specifications.

(3) The supervisors shall call the team together within twenty (20) days of receipt of notice, at their request or at the request of the department or the applicant for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection or the preparation of the plan.

(4) Each member of the team shall recommend, in writing, within fifty (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations, and notify the applicant and team members within sixty (60) days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within five (5) days of receipt of the supervisors' decision, that an arbitration panel, as provided in section [6 of this act] be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with any recommendation or alternative plan, by the supervisors to the applicant, the applicant,within fifteen (15) days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project prior to the expiration of this fifteen (15) day period unless written permission is given by all team members.

(8) The supervisors may extend the request of any team member, the time limits provided in section [5 (4) and (5) of this act] where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed one (1) year from date of application. The applicant shall be notified, within sixty (60) days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors.

Section 6. Arbitration panel -- costs. (1) The arbitration panel shall consist of three (3) nonpartisan members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it and will review the proposed project in line with the policy set forth in Section 2.

(2) Cost of the arbitration panel, computed as for jurors' fees under section 25-401, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

Section 7. Vested water rights preserved. This act shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

Section 8. Emergencies -- procedure. (1) The provisions of this act shall not apply to those actions which are

necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for any project under this section shall notify the supervisors in writing within fifteen (15) days of the action taken as a result of an emergency.

(2) The supervisors shall send one (1) copy of the notice, within five (5) days, to the department.

(3) A team, called together as described in section [5 (3) of this act] , shall make an on-site inspection and individual written reports to the supervisors within thirty (30) days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within any five (5) year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to that emergency action.

(5) The supervisors shall determine the feasibility of the more permanent solution ascertained by each team member, and select the most feasible. They shall recommend, within thirty (30) days, that the person put the selected solution into effect within a reasonable period of time, as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in section [6 of this act] , be appointed to hear the dispute and make a final written decision thereon.

Section 9. Modification of plan -- cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

Any of the involved entities may withdraw or modify required modification of the project within ten (10) days after the decision.

Section 10. Application of flood plain management act. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 89, chapter 35, floodway management and regulation

where designated flood plains or designated floodways have been established in accordance with that chapter.

Section 11. Rules -- minimum standards. (1) By July 1, 1975, the board of natural resources and conservation in cooperation with the ~~state fish and game commission~~ ASSC. CONS. DISTS shall adopt rules setting minimum standards and guidelines for the purposes of this act.

(2) By January 1, 1976, the supervisors shall adopt, by resolution and after a public hearing, rules and standards for the review and approval of a project which shall meet or exceed the minimum standards set by the board under subsection (1) of this section and set standards and exclusions for minor alterations of streams such as installation of culverts, bridges, machinery crossings, snagging and other similar minor alterations and modifications within their districts.

Section 12. Judicial review. Any final action under this act may be appealed within thirty (30) days to the district court as provided in the Montana Administrative Procedure Act.

Section 13. Public nuisance. Except for emergency action, stream channel activity engaged in by any person without prior approval, as prescribed in this act, is declared a public nuisance and subject to proceedings for immediate abatement.

Section 14. Penalty -- misdemeanor -- restroation. (1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), for each day that person continues to physically alter or modify the stream, and in addition that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Any person or entity who violates the time provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars ($5) per day.

Section 15. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

- End -

March 11, 1975

The Natural Resources Committee convened at 10:30 a.m. in room 437 on March 11, 1975, with Chairman Bradley presiding and a quorum present. Reps. Fred Fishbaugh and Jack Moore were excused and Reps. Quilici and Stoltz were absent.

SB 79 SENATOR THIESSEN, the chief sponsor, said this was the bottom hole temperature bill. It would require the filing of bottom hole temperatures of oil and gas wells with the oil commission, information then to be sent to the Bureau of Mines and it would be public information. He felt geothermal was a promising energy potential. He said at the conference at Cal Tec the Sperry Research Center had revealed a geothermal pump which was self generating and pollution free. He said we should be on the lookout for geothermal fissures and this bill would be a useful tool to that end. He introduced Lloyd Ernest of Western Fuels.

There were no other proponents or opponents.

Questions from the committee. Rep. Richards inquired about using atomic explosions in geothermal work. Senator Thiessen said this was done only if the geothermal source didn't have a fracture--but he said there were other ways of fracturing the rock. Rep. Ellison inquired what effect this would have on geothermal leasing--Senator Thiessen felt it might be to the landowner's advantage as he might be able to get a better lease contract.

SB 350 SENATOR LYNCH, the chief sponsor, said this bill is related to SB 19, the one that would open up the secrecy provision in hard rock mining. He said those people that might have an interest in the information that is revealed should have a right to intervene before the land board. He said the mining industry is not happy with the word "major" and he had no objection to saying "may be directly injured."

BILL ROMINE, Montana Mining Association, spoke in support of the bill and his testimony is exhibit 1.

SB 374 SENATOR COLBERG, the chief sponsor, stated this bill has to do with solution extraction of uranium. He said originally there was a fiscal note attached but this was removed. It would provide for a two year moratorium on this type of mining until a study could be conducted as to possible problems. He left information regarding the possible dangers involved (exhibit 2) and also a list of the uranium permits applied for in Montana (exhibit 3), and the EQC report on his bill is exhibit 4.

There were no other proponents or opponents. Questions were asked by the committee. Rep. Day expressed concern about the deep wells in the Fox Hill Sands area--that this might be a part of their problem (uranium searching).

SB 310 SENATOR GREELY, chief sponsor, handed in a sheet of proposed amendments which is exhibit 5. This would chiefly remove the distinction between a major and a minor alteration. He said he had just been handed a copy of Mr. Fredericks' suggested amendments and hadn't had a chance to go over them, but he was sure they could sit down and work out something. He said he was opposed to any amendments which would eliminate the emergency provision of the bill.

Exhibits 2, 3 and 4 are no longer available.

S. J. SEIDENSTICKER, rancher and Montana Association Conservation Districts, was the next proponent speaker. He stated in the past two years he had opposed similar legislation, but he had helped organize and worked with the people who had drafted this bill. He said it was the result of many groups working together which included ranchers, sportsmen, fish and game personnel, and EIC people. He said they all had to give a little. He said this is much need legislation as, while most people have consideration for the neighbour downstream, others don't. He said they did emphasize local control and this act would be handled through the soil conservation districts in each county whose members are elected by the people. He said these members are not paid for their services and do have to live under the bill themselves. He said he fervently hoped the committee would support the bill.

PETE JACKSON, Conservation Supervisor, stated he was here to support SB 310. He said this bill is set up to try to get an orderly method to solve problems with rivers and streams without hurting the general economy of the area. He said, too, it was the result of many people working together--no group was denied input. He felt this bill would benefit the general economy of the state.

TONY SCHOONEN, Trout Unlimited of Butte, was the next proponent speaker and a copy of his testimony is exhibit 6 of the minutes.

URANA CLARKE, from Livingston representing self, was the next proponent speaker and a copy of her testimony is exhibit 7 of the minutes.

DONALD R. REICHMUTH, Bozeman, representing self, was the next proponent speaker and a copy of his testimony is exhibit 8. He showed photographs to emphasize his point that it is difficult to draw a line between a major and minor alteration.

LEONARD G. PETERSON, Montana Association of Conservation Districts, spoke next in support and a copy of his testimony is exhibit 9.

He then stated he had a letter from JACK IMAN, State Master of Montana State Grange, exhibit 10, and he read the letter.

THOMAS DANIEL, Skyline Sportsmen Association, was the next speaker and a copy of his testimony is exhibit 11.

TOM CROWLEY, representing the city of Missoula, city engineer of Missoula, explained a problem they had on the Clark Fork River in which the Orchard Ditch Co. in repairing their irrigation weir had dumped rubble and rocks into the river. He went through the steps he had taken to combat this and how inadequate they were. He said he gave up as no help was available. He was in support of the bill. Information, pictures and copies of letters which were used in trying to resolve the problem are part of the record and exhibit 12.

TED LUCAS, Montana Stockgrowers' Association, stated their support of the bill as it comes from the Senate.

REP. JIM MOORE spoke as a proponent. He said as a child he had fished the Little Blackfoot and over the years has observed what "minor" alterations have done to the stream--changed it to a glorified irrigation ditch. He felt the only difference between minor and major alterations is that it takes a little longer but results are the same.

DOUGLAS ALLEN, County Commissioner of Madison County, did not speak but submitted written testimony supporting the bill which is exhibit 13 of the minutes.

FRANKLIN GROSFIELD, Chairman Sweet Grass Conservation District, spoke as an amender. He stated the bill needs some clarification to make it workable.

CONRAD B. FREDRICKS, Sweet Grass County Preservation Association, was the next amender. He stated this still affects property rights. He presented copies of suggested amendments (exhibit 14) and went through their reasons for these suggested amendments (exhibit 15).

EVERETT SNORTLAND, Montana Farm Bureau, signed as opposing and amending. He said he had been supervisor of a conservation district and had been on the state board. He felt the bill would cause a lot of red tape. He said he hoped the committee would consider Mr. Fredricks' amendments.

NORM STARR, Sweet Grass Preservation Association, an amender, said he was resigned to live with the bill providing the language could be cleaned up to definitely insure local supervisory participation. On the arbitration board--he felt if he had a problem he would definitely want to be judged by people who were qualified and had empathy, he thought agribusiness designation was good.

BILL BAILLIE, representing self, made a strong speech opposing the bill. He felt it was wrong to deny a property owner the right to do what he wished with his property without just compensation.

BOB SHIPLET, representing self, opposed the bill saying it restricts ranchers making it more expensive and more difficult to produce food.

ROBERT LANE, representing self, spoke as an amender. His testimony is exhibit 16. He showed photos, illustrating how the stream through his place had changed over the years and why repair work was needed. Exhibit 17 is a letter written by John J. Gaffney, Fish and Game Department stating inspection but not approval of this repair work and this was left as testimony by Mr. Lane.

VIRGE HOLLIDAY did not speak but presented written testimony opposing the bill and it is exhibit 18.

Also signing witness statements were:
Marilyn Grosfield to amend, Big Timber.
Walter Steingruber, Willow Creek, to amend.
Dennis Workman, Livingston, support.

A letter was received from Gordon N. Haugen, Pres.-elect of American Fisheries Society favoring SB 310. (Exhibit 19)

In his rebuttal Senator Greely stated no one's property rights were going to be taken away. The supervisor will be given notice that a project is going to take place, and a determination can take place if it will do harm to his property or to a neighbour's downstream.

Chairman Bradley announced the subcommittee to study SB 310 will be Reps. Shelden (chairman), Anderson and Kemmis.

Questions from the committee. Rep. Anderson asked Mr. Seidensticker if he had studied Mr. Fredrick's amendments--answer was no but he would like to. Rep. Huennekens inquired of Mr. Lane if the Fish and Game had prevented his doing his repair work--answer was no as their role is only advisory. Rep. Meloy asked Senator Greely what relationship this bill would have in regard to existing stream acts. Mr. Greely said our present law applies only to state agencies and counties. He said certain standards will need to be drafted by the Natural Resources Department with input from Fish and Game--standards that can be lived with at the local level.

EXECUTIVE SESSION

HJR 24 Rep. Meloy moved be concurred in and it was seconded by Mr. Schye. Rep. Ellison stated log scaling definitely needed to be studied and Rep. Jim Moore concurred. Motion passed unanimously with those present (absent were Reps. Fishbaugh, Stoltz, Day, Quilici).

SJR 25 Rep. Shelden moved be concurred in. Motion carried unanimously with same absent as above. Rep. Shelden will carry this bill on the floor.

SB 79 Rep. Barrett moved be concurred in. Rep. Ellison raised the question if this could be revealing some confidential information and Rep. Huennekens didn't think the bottom hole temperature was too important to the oil and gas companies. The committee researcher, Debbie Schmidt, stated she had talked with a number of people involved in the oil and gas business and they were perfectly willing to give this information. This would be just the final temperature and not a continuing monitoring as that would be prohibitive cost-wise.

Motion carried unanimously except for those absent which were the same as those above. Rep. Barrett will carry the bill on the floor.

SB 350 Rep. Meloy moved to amend on page 1, line 14, striking "own"; and on line 15 by striking "of any"; and line 16 by striking "economic nature" and "injured" and insert in lieu of injured "adversely affected". Motion to amend carried unanimously except for those absent (same as above). Rep. Moore moved be concurred in as amended. Motion carried unanimously, same absent as above.

Meeting adjourned at 1:10 p.m.

Respectfully submitted,

Dorothy Bradley
DOROTHY BRADLEY, CHAIRMAN

eas

Ex. 6

CHAIRWOMAN BRADLEY AND COMMITTEE MEMBERS:

I AM TONY SCHOONEN AND I'M REPRESENTING OUR TROUT UNLIMINTED CLUB IN BUTTE WHICH IS PRESENTLY OVER 100 MEMBERS.

I HAVE ALSO BEEN ONE OF THE MEMBERS OF THE COMMITTEE THAT HAS WORKED FOR A YEAR IN PREPARING SB 310.

IN TRYING TO REVERSE THE OPPOSITION TO LAST YEAR'S STREAM PRESERVATION BILL, WE HAVE WORKED TOWARD LOCAL CONTROL, RATHER THAN STATE CONTROL AND ALSO MODIFIED MANY PHASES OF THE BILL TO MAKE IT MORE FLEXIBLE FOR THE LANDOWNERS.

THE AMENDMENT UNDER THE PROJECT DEFINITION WHICH REFERS TO MAJOR AND MINOR ALTERATIONS IS THE MOST CRIPPLING AMENDMENT IN THIS BILL. THE INTENT OF THE BILL WAS TO LEAVE THE PROJECT DEFINITION UP TO THE LOCAL DISTRICT SUPERVISORS AND TO BE INCLUDED IN THE MINIMUM STANDARDS, ALSO DRAWN UP AT A LOCAL LEVEL.

BY ALLOWING THIS AMENDMENT TO STAY IN THE BILL, A GREAT MANY ARGUMENTS COULD ARISE WITH HARD FEELINGS AND POOR COOPERATION AMONG ALL CONCERNED, AS AN END RESULT.

THE COMMITTEE SHOULD ALSO STUDY CAREFULLY THE AMENDMENT UNDER SECTION 15 MAKING ALLOWANCES FOR EXCLUSIONS. WE FEEL THAT THIS SECTION COULD BE DELETED AND INCLUDED IN THE MINIMUM STANDARDS WHERE THERE WOULD BE LESS CHANCE FOR MISINTERPRETATION AND ABUSE OF THE TERMS MENTIONED.

IT IS INDEED UNFORTUNATE THAT IN THE MANY MONTHS THAT IT TOOK TO PREPARE THIS BILL, THAT THE ASSOCIATIONS THAT PROPOSED THIS AMENDMENT AND SEVERAL OTHERS, DID NOT COME FORTH FOR THE PURPOSE OF MAKING SOME COMPROMISES WITH OUR COMMITTEE RATHER THAN OFFERING AMENDMENTS THAT WOULD GUT THE BILL AND MAKE IT INOPERATABLE.

I WOULD STRONLY RECOMMEND THAT THE COMMITTEE GIVE A DO PASS VOTE TO S.B. 310 WITHOUT THE AMENDMENTS.

Ex. 1

NAME JEANNA C. CLARK Bill No. S.B. 310

ADDRESS NINTH STREET ISLAND, LIVINGSTON Date 3/11/75

WHOM DO YOU REPRESENT? MYSELF

SUPPORT YES OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

original bill seems more equal to the task of protecting our streams - large and small

Ex. 1

URANA CLARKE, LOG-A-RHYTHM, NINTH STREET ISLAND,
LIVINGSTON, MONTANA 59047, TELEPHONE 406-222-0383

March 10, 1975

To the House Natural Resources Committee
State Capitol, Helena, Montana

Dear Members:

This is a request to you to support Senate Bill 310, the Stream Preservation Act, and to send it to the House with a "do pass" recommendation.

I moved to Montana nearly eleven years ago to enjoy a life of natural beauty, unimproved by the clumsy hands of man. I built myself a log home on an island in the Yellowstone River. I know what men have done to rivers and streams in other states and I hope that we can avoid that here.

In most cases work has been carried out by individuals without regard for its possible harm to others and to the water itself. We had serious flooding in June of 1974 and we have planned control measures under the guidance of the Montana Fish and Game Department which will be paid for by a group of property owners along both banks of two channels around Ninth Street Island. The plan was drawn up by Dr. Donald Reichmuth, and is now in the Omaha office of the U.S. Corps of Engineers which suddenly declared utself ruler of the Yellowstone River on January 22, 1975, without any warning to us or to its own Federal Agencies. We believe that it may have been requested by those who hope to take the Yellowstone out of the free-flowing class by building the Allen Spur Dam.

We hope that our project will become a link in a larger flood control plan for the entire stream. The County Commissioners approve what we are doing and will contribute toward the cost. The City of Livingston also approves because some of their flooding difficulties will be removed by the work we do. It is important for all of our Montana streams to be in capable hands so that they will not be harmed when things go well but will be correctly improved when conditions require it.

It is my belief that Montana Fish and Game should be the guardians of all of our waterways. They have the experience and the training to oversee any work that is nevessary .

Very truly yours,

Urana Clarke

(Miss) Urana Clarke

Ex. 8

NAME Donald R Reichmuth Bill No. SB 310

ADDRESS Box 294 Rt 2 Bozeman Mt Date Mar 11, 1975

WHOM DO YOU REPRESENT? Self

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am consultant for: 1) Individuals near Livingston with problems on the Yellowstone 2) Fish & Game Dept on all their projects in the State, 3) and advisor to the Gallatin County Commissioners on their West Gallatin River Study Committee.

During my work and study I have seen many problems created by well meaning individuals who didn't understand the river forces they were trying to manipulate. It is important this kind of activity is controlled and guided so that one individual does not harm others.

The amendments which I support would eliminate the Major - Minor wording in the bill. I feel this language is unworkable and unnecessary. It would be much better for local groups to decide which projects should be controlled.

44

EX. 9

TO: Ms. Dorothy M. Bradley, Chairman
Natural Resources Committeemen

I am Leonard Peterson, Director of MACD and appear here in support of SB 310.

I would like to say I think it is a perfect Bill -- I can't do that -- but it is a good Bill.

Much research, study and editing has been done by many organizations and individuals, including legal opinions of several interested and some disinterested attorneys.

Some organizations involved are:

1. Montana Association of Conservation Districts
2. Montana Stockgrowers Association
3. Northern Plains Research Council
4. Environmental Information Center
5. Sportsman Groups
   - Beaverhead Sportsmen
   - River Rats of Trout Unlimited, Butte
   - Skyline Sportsmen, Butte
6. State Fish & Game
7. Department of Natural Resources & Conservation

There are those who feel the Bill was "Gelded" in the Senate. I want you to know that many of us had ridden some very fine Geldings.

I would respectfully urge your approval of SB 310.

Leonard Peterson

Leonard Peterson, Director
Montana Association of Conservation Districts

NAME Leonard Peterson Bill No. 310

ADDRESS Corvallis Mont 59828 Date 3/11/75

WHOM DO YOU **REPRESENT?** Mont. St Grange

SUPPORT ✓ **OPPOSE** _____ **AMEND** _____

PLEASE LEAVE **PREPARED STATEMENT WITH SECRETARY.**

Comments:

Appearing for State Master

Jack Iman

Ex. 10

KEITH NORDHEIM	FOREST FARRIS	JACK IMAN	MARJORIE CORNETT	A. J. PATTERSON
Secretary, Corvallis	Overseer, Kalispell	Master, Victor	Lecturer, Thompson Falls	Treasurer, Rt. 1, Hamilton
59828	59901	59875	59873	59860

Montana State Grange

EXECUTIVE COMMITTEE

RALPH MANNIX, Sr. ..... Avon 59713
WINTON WEYDEMEYER ..... Fortine 59918
JAMES COOK ..... Lone Pine 59848

March 9, 1975

TO CHAIRPERSON DOROTHY BRADLEY AND THE MEMBERS OF THE HOUSE COMMITTEE ON NATURAL RESOURCES:

I am Jack Iman, Master of the Montana State Grange, presenting testimony on behalf of the Grange members on Senate Bill 310.

The Grange in Montana has a membership drawn from the wide spectrum of people living in the rural areas, and embraces farmers, ranchers, rural residents including laboring people, small businessmen, teachers and retired persons. All havenot only a basic interest in conservation, but a real concern with preserving the quality of living in Montana which includes care for the creeks and rivers of our State.

I myself am a rancher in the Bitterrrot and have been a Conservation District Supervisor for many years, as have quite a number of Grange members. The Grange has supported the efforts of Conservation Districts for many years. We were proud to give support when ecology and environment were not yet receiving general attention and many people were not realizing the vital role of conservation in the sound development of the State. We believed then and we believe now that the best conservation work is done by dedicated local people who know intimately the needs and problems of local areas. We think that the years of experience in securing cooperation for carrying out needed practices will be of great value in securing cooperation of land holders for stream preservation without engendering resistance to the necessary measures.

Since soil and water management is one of the prime concerns of the Soil Conservation Service, technicians assigned to Conservation Districts are well trained in necessary skills. The District Supervisors therefore have the best technical assistance available for recommending and working out sound practices for soil erosion control and for engineering water projects.

The Montana State Grange therefore urges your support of SB 310 which provides that the responsibility for the preservation of the form and course of stream banks on privately owned property to control soil erosion and sedimentation to a minimum be placed in the hands of Conservation Districts, and where such Districts are not operating, Grass Conservation Districts.

1A

and where neither exists, County Commissioners.

Most of the State is covered now by Conservation Districts so there is a good bank of people all over the State with a declared interest in good conservation practices. They have been elected in their district areas to lead the conservation effort. They will therefore receive far more cooperation and support than anyone else would, so that the purpose of preserving stream banks and controlling sedimentation can be more readily accomplished through the provisions of this Bill than in any other way.

Respectfully,

MONTANA STATE GRANGE

Jack Iman

Jack Iman, Master

EX. 11

NAME Thomas U Daniel Bill No. 310

ADDRESS 332 W. Gold Bultg, Mt Date 3/11/75

WHOM DO YOU REPRESENT? Skyline Sportsman Assoc.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This bill has been written by agricultural interests, private land owner interests, and sportsman interests in mind. Foremost in our minds through the whole project has been local control. On hopes of having the best legislation before others that may not be livable by all interests & support passage of the bill as close as possible to the original bill as drafted.

4F

TESTIMONY, SB
SENATE NATURAL RESOURCES COM.
2-22-75

1. WEIR COMPLETED WEST OF HIGGINS AVE. BRIDGE, 1961:

A. REQUIRED TO DEFLECT FLOW INTO ORCHARD HOMES DITCH

B. JOINT PROJECT OF CITY & DITCH CO. - CITY APPROVED, DITCH CO. MUST KEEP IN REPAIR

C. NECESSARY BECAUSE OF NEW BRIDGE

2. WEIR DETERIORATED TO INEFFECTIVENESS, 1961-73:

A. DITCH CO. DID NOT MAINTAIN

B. NORMAL DEBRIS FROM HIGH WATER AND ICE, PLUS LACK OF MAINTENANCE, RENDERED IT INOPERABLE AND USELESS

3. FEB. 24, 1973 - DITCH CO. REQUESTED CITY ENGR. TO GET CORPS OF ENGINEERS:

A. TO INSPECT WEIR & DETERMINE EXTENT OF DAMAGE TO WEIR & RIVER BOTTOM

B. TO ~~HAVE~~ HAVE THEIR HYDRAULIC ENGR. STUDY PROBLEM & GIVE THEM A WORKING SYSTEM

4. CITY ENGR. DISCUSSED PROBLEM W/CORPS ON 6 & 12 MARCH

5. MARCH 19, 1973 - CORPS OF ENGRS. NOTIFIED DITCH CO.:

A. NO AUTHORITY TO PARTICIPATE IN CORRECTION OF PROBLEMS

B. RECOMMENDED INVESTIGATION & REDESIGN BE DONE BY COMPETENT ENGR. FAMILIAR WITH RIVER HYDRAULICS & IRRIGATION SYSTEMS

C. STATED THAT FINISHED PROJECT SHOULD BE DESIGNED TO AVOID ANY FURTHER OBSTRUCTION TO FLOW OF RIVER THAN NOW CAUSED BY EXISTING STRUCTURE

D. REQUESTED OPPORTUNITY TO COMMENT ON EFFECTS ANY PROPOSED CHANGES OR REPAIRS COULD HAVE ON EXISTING FLOOD CONTROL STRUCTURES IN AREA

6. AUG. 1, 1973 - BULLDOZER IN RIVER EAST OF WEIR, SCRAPING RIVER BOTTOM INTO BERM:

A. CITY ENGR. GAVE DITCH CO. NOTICE TO CEASE WORK, UNTIL PLANS & SPECIFICATIONS OF PROPOSED RECONSTRUCTION OF WEIR OR OTHER WORK COULD BE REVIEWED & APPROVED

5

B. DITCH CO. SECRETARY & ATTORNEY MET W/CITY ENGR & QUESTIONED CITY JURISDICTION - CITY ENGR. INDICATED THAT CORPS OF ENGINEERS HELD CITY RESPONSIBLE FOR CONSTRUCTION WHICH COULD INTERFERE W/PROPER FUNCTION OF FLOOD CONTROL LEVEES IN AREA PREVIOUSLY CONSTRUCTED BY CORPS

C. CITY ENGR. REMINDED DITCH CO. SECRETARY OF MARCH 19 CORPS LETTER REQUESTING DESIGN REVIEW

D. CITY ENGR. ALSO STATED THAT RECONSTRUCTION OF WEIR OR OTHER ADJACENT CHANNELING WOULD CHANGE FLOW CHARACTERISTICS AND SHOULD BE WELL ENGINEERED BY COMPETENT ENGR.

E. CITY ENGR. ALS STATED THAT USING A BULLDOZER TO CHANGE RIVER BED AND USE AS BORROW MATERIAL OF RIVER GRAVEL WAS OUTSIDE SCOPE OF DITCH CO'S. RIGHT TO REPAIR WEIR

7. AUG. 2, 1973 - DITCH CO. SECY. & LAWYER/MINING ENGR. REQUESTED MORE DETAILS OF CITY'S REQUEST FOR ENGINEERING DESIGN.

A. CITY ENGR. PROVIDED:

1. COPY OF ORIGINAL WEIR DESIGN

2. CORPS OF ENGR'S. CHANNEL DESIGN

3. CLARK FORK RIVER FLOOD CONTROL DATA MANUAL (NECESSARY TO MAKE DESIGN)

B. LAWYER/MINING ENGR. INDICATED HE PLANNED TO DO THE ENGINEERING DESIGN

8. AUG. 3, 1973 - CONTRACTOR RECOMMENCED DOZER WORK W/O APPROVED DESIGN

DITCH CO. FILED SUIT AGAINST CITY, ENJOINING INTERFERENCE W/WORK

9. HELP REQUESTED BY CITY FROM:

A. CORPS OF ENGRS.

B. MONT. DEPT. OF NATURAL RESOURCES

C. STATE BOARD OF HEALTH (INCLUDING EPA - ENVI. PROT. ADM.)

D. STATE FISH & GAME

10. RESULTS:

A. ALTERATION OF STREAM FLOW

B. SEDIMENTATION OVER PERIOD OF TIME

C. SCOURING OF RIVER BOTTOM

D. BERM NOT PERMANENT - WENT OUT W/NEXT SPRING FLOOD

To: Mayor Robert Brown

CITY OF MISSOULA

DRAWER 11
MISSOULA, MONTANA 59801
728-2112 AREA CODE 406

SUBJECT: Irrigation Ditch Weir, Clark Fork River

REFER TO: Bob Brown

DATE: 2/21/75

MESSAGE

1. Weir Completed Jan 26, 1961
2. Refer to File Memo No 73-462 for brief on problem with repair of weir by Ditch Company
3. We contacted following for help but none was received
   a. Montana Natural Resources
   b. EPA in Helena w/ State Board of Health
   c. State Board of Health
   d. Fish & Game
   e. Army Corps of Engr
   f. City Attorney

SIGNED Thomas J Crowley

REPLY

TO

DATE

SIGNED

SENDER: SEND WHITE AND PINK COPIES WITH CARBON INTACT

ECON-O-FORM NO. 103-RR

RECIPIENT: REPLY ON WHITE COPY – RETAIN PINK COPY

August 27, 1973

Letter E73-540

TO: James Huggins
623 Pattee Creek Drive
Missoula, Mt 59801

SUBJECT: Lights, Water & Sewer Committee

Enclosed is a letter dated August 23, 1973, from the Corps of Engineers. It concerns the law suit against the City by the Orchard Homes Ditch Company.

Tom asked me to refer this to you for whatever action the committee feels appropriate.

Sincerely,

A. W. Kendall, P.E.
Sanitary Projects Engineer

AWK/kw

54

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
1519 ALASKAN WAY SOUTH
SEATTLE, WASHINGTON 98134

NPSOC

23 AUG 1973

Mr. Thomas N. Crowley
City Engineer
City of Missoula
201 West Spruce
Missoula, Montana 59801

Dear Mr. Crowley:

This is in response to your letter of 8 August 1973 directed to the attention of Mr. Charles Bickley, involving a question posed by your City Attorney with respect to whether in stopping a restoration project of the Orchard Ditch Company the city was acting on behalf of the Corps of Engineers or otherwise.

As we understand, the ditch company has commenced a civil action against the city for damages and injunctive relief because of its action in stopping their project. The apparent reason for the city's action is that the ditch company has failed to provide engineering data on their weir repair project, so they could evaluate any possible adverse effects of their proposal work on an approved Corps of Engineers' flood control project on the Clark Fork River.

Under the city's Resolution No. 2555 dated 20 September 1965, in paragraph i. thereof, the city, through its representatives, agreed with the Corps that they would "Prevent future encroachment which might interfere with proper functioning of the project" (the flood control project).

It is assumed that the city in causing the work to be stopped on the weir by the ditch company, pending approval of plans, was seeking to protect itself from any liability that could arise because the ditch company's work resulted in a possible violation of their agreement with the Corps in connection with the cited section of its resolution.

We conclude, therefore, that the city in taking the action it did, was acting on behalf of itself and not on behalf of the Corps of Engineers.

Sincerely yours,

JAMES F. WALSH
District Counsel

August 8, 1973

Letter E73-464

TO: Department of the Army
Seattle District Corps of Engineers
1519 Alaskan Way So.
Seattle, Washington 98134

ATTENTION: Mr. Charles Bickley

REFERENCE: (a) Letter NPSEN-DB-CP, dated 19 March, 1973, Lt Col Mueller Jr. to Orchard Homes Ditch Company, Subject Weir Repair
(b) Telecon August 7, 1973, T. Crowley with Mr. C. Bickley, Same Subject

This letter confirms the problems relating to the work by the Orchard Homes Ditch Company. Enclosed are copies of file memos and correspondence describing the problem in detail to date.

1. Letter dated Feb. 24, 1973, Ditch Co. to City Engineer
2. Letter NPSEN-DB-CP, dated 19 March, 1973, Lt Col Mueller Jr. to Orchard Homes Ditch Co.
3. File Memo 73-462 by City Engineer Aug 8, 1973.
4. File Memo 73-463, telecon T. Crowley to C. Bickley, Aug. 7, 1973.
5. Court summons dated 3rd August 1973, filed by Raymond Tipp, attorney for Orchard Homes Ditch Company.
6. Missoula photo and article August 8, 1973.

The Missoula City Attorney questions if the City of Missoula does in fact have any jurisdiction in the matter or if we were acting in behalf of the Corps of Engineers by previous project agreements?

Please review the above and advise the undersigned of any recommendations.

Thomas N. Crowley

Thomas N. Crowley, P.E.
City Engineer

TNC/kw

Enc: As noted.

57

Missoulian

Montana, Wednesday, August 8, 1973

SINGLE COPY ..... 15¢ Carrier Delivery Price Is Lower

Montana Grain Crop To Bring Half Billion Story on Page 19

rtment

Spiro

tl e State Roads Com-
while Agnew was gov-
he commission became
th Transportation De-
nt in an executive
iz on under the Man-
in tration.

ere reports that the
ls involved the award
r contracts in Mary-
t w the General Serv-
In inistration since Ag-
came vice president in
owever, Justice Depart-
fficials refused to con-
at aspect.

w, in a statement issued
office Monday night,
ed that he was under
l investigation but de-
v wrongdoing.

e Department officials
chardson also discussed
e with Cox, who is con-
an independent investi-
f the Watergate affair
r alleged illegal activi-
embers of the admin-
B they said he de-
to the case with
Beall, the U.S. attorney in Baltimore who began the investigation last January.

The investigation involves charges of bribery, extortion and tax evasion relating from payments from private building contractors to Maryland and Baltimore County political figures.

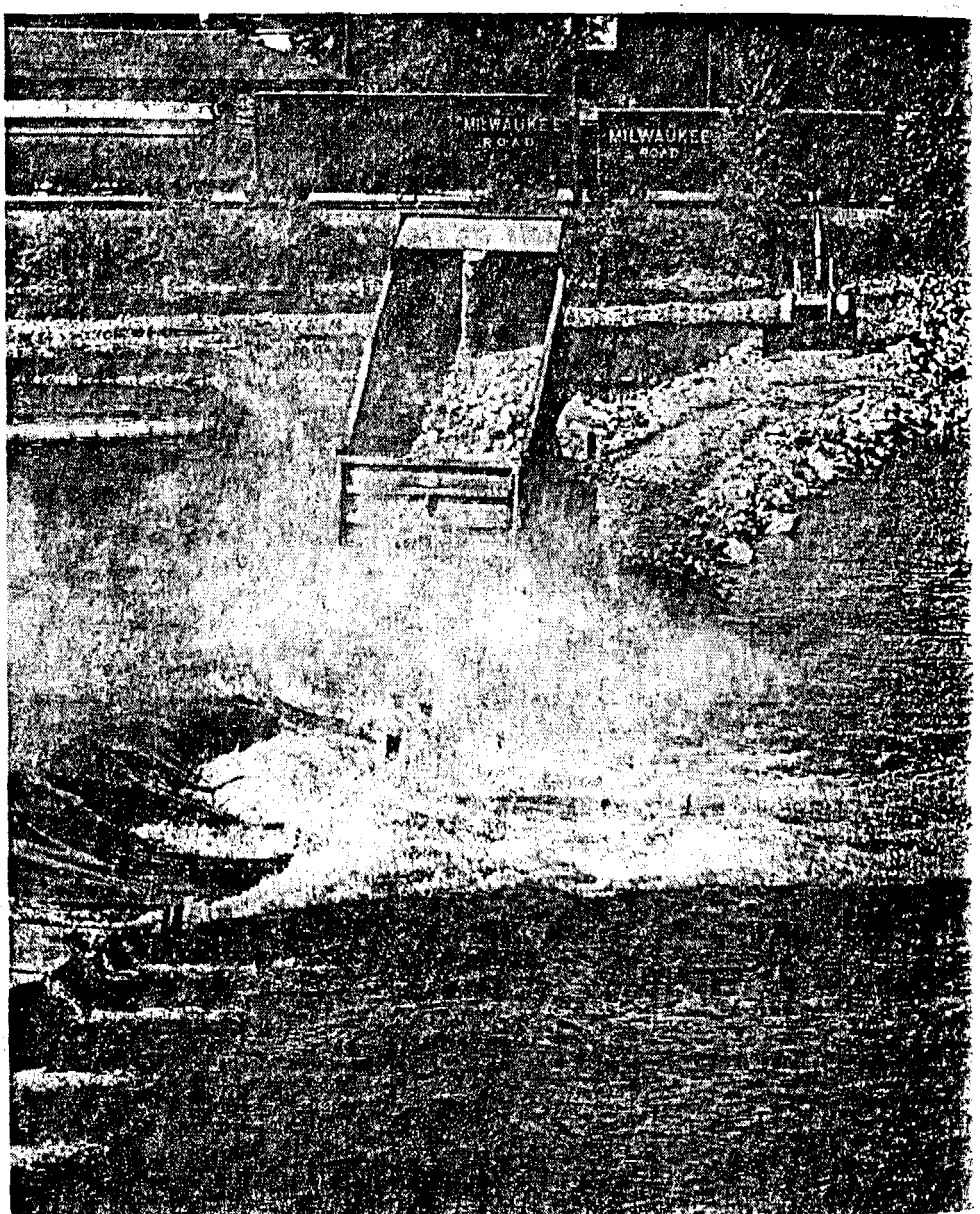
The probe originally focused on alleged political corruption in the county where Agnew began his political career in 1958 as a member of the Board of Zoning Appeals. It reportedly was broadened in recent months to embrace state contracts awarded during Agnew's two years as governor as well as the GSA contracts in Maryland since he was elected vice president.

Agnew served as the state's chief executive from 1966 until his election as vice president.

The investigation reportedly is still in its preliminary stages

(Turn to Page 2, Col. 5)

Some Phase 4 Rules Announced



WEIR REBUILDING — The rebuilding of the weir just west of the Higgins Avenue Bridge continued Tuesday as a truck dumps a load of rock into the Clark Fork River. The weir belongs to the Orchard Homes Ditch Co. and channels water into an irrigation canal serving the Orchard Homes area. The company filed suit in district court Monday and obtained a temporary restraining order stopping the city from interfering with the rebuilding. A hearing on the suit has been set for Aug.

City of Missoula

MISSOULA, MONTANA 59801

CITY ENGINEER
201 West Spruce
Telephone 728-2817

August 8, 1973

Memo No. 73-461

FILE MEMO

SUBJECT: Weir repair, Orchard Homes Ditch Co., Telecon with Army Corps of Engineers

REFERENCE: (a) Telecon 8/7/73, T. Crowley/City Engineer, with Mr. Charles Bickley/Army Corps of Engineers
(b) Letter NPSEN-DB-CP dated 19 March 1973, Lt Col. F. W. Mueller Jr. to Arwood D. Stickney/Orchard Homes Ditch Co., Subject Weir Repair

Mr. Charles Bickley of the Army Corps of Engineers was contacted to relate problems of the City of Missoula being suited by the Orchard Homes Ditch Company. Mr. Bickley was appraised of the problem and indicated that the City did have jurisdiction delegated by the Corps of Engineers to insure that improvement and encroachment controls were maintained within the City of Missoula City Limits. Mr. Bickley also indicated that they would respond in a timely manner by telephone to issue an approval of design and construction following a review by the Missoula City Engineer and their engineering department.

Thomas N. Crowley

Thomas N. Crowley, P.E.
City Engineer

TNC/kw

57

City of Missoula

MISSOULA, MONTANA 59801

CITY ENGINEER
201 West Spruce
Telephone 728-2817

August 8, 1973

Memo No. 73-462

FILE MEMO

SUBJECT: Orchard Homes Irrigation District, Weir Reconstruction, August 1973

PURPOSE: This file memo provides the information relating to the proposed work by the Orchard Homes Irrigation District.

BACKGROUND

In February 1973 the Orchard Homes Ditch Company requested assistance from the Corps of Engineers to review their weir for repair and reconstruction with hopes that the Corps of Engineers would make the repair. On March 19, 1973, the Corps of Engineers informed the Ditch Company that they had no authority which would allow them to make the repair. The Corps of Engineers indicated that the Ditch Company should secure a competent engineer to investigate and redesign the weir. The Corps of Engineers indicated that they would appreciate the opportunity to comment on the effects of any proposed changes or repairs might have on existing flood control structures.

PRESENT SITUATION

On August 1, 1973, a contractor was utilizing a bulldozer east of the weir and changing the river bed. The City Engineer, Tom Crowley, with the Mayor's concurrence, issued a request to have the proposed work stopped until plans and specifications of the proposed reconstruction of the weir or other work could be reviewed and approved. We had heard earlier in March 1973 that the Ditch Company had plans to use old reclaimed concrete rubble to repair or reconstruct the weir. We indicated that old concrete with rebars is a hazard and unsightly and we suggested the use of quarry rock similar to the Corps of Engineers constructed levee.

Soon after, the notice to cease work was given, Mr. Raymond Tipp, attorney, and the Ditch Company secretary, Mr. Martin Behner, met with the City Engineer relative to the problem of repair of the weir. They questioned if the City of Missoula or its representative had any jurisdiction. The City Engineer indicated that the Corps of Engineers held the City responsible for construction, which could interfere with proper function of the flood control levees in the area. Mr. Behner was reminded of the Corps of Engineers' letter on March 19, 1973, requesting a design review. The City Engineer indicated that he was aware that the Ditch

Company had rights to the water and a right to repair and maintain the weir. Reconstruction of the weir or other adjacent channeling would change the river flow characteristics and should be well engineered by a competent engineer.

Mr. Behner stated that the Ditch Company has many people needing the water and the City had to approve their work immediately. The City Engineer pointed out that the Ditch Company had been given notice in mid-March 1973 from the Corps of Engineers and a design should have been properly prepared. The delay, if any, was caused by the Ditch Company and not by the City, due to the late commencement of the work. During the meeting, it was suggested by the City Engineer that the Ditch Company look towards the request for design as good sound engineering, to prevent early loss of the new work, plus preventing damage to other properties as a result of the reconstructed weir. It was also pointed out that using a dozer to change the river bed and use the river gravel as borrow material is outside the scope of the Ditch Company's right to repair the weir. Also, the design of the reconstructed weir should be detailed sufficiently to relate its effect on river flood control levees and adjacent banks.

On August 2, 1973, Mr. Tipp, attorney for the Ditch Company, sent a lawyer/mining engineer and Mr. Behner to the City Engineer's office for more details of our request for an engineering design. We provided a copy of the original weir design, a Corps of Engineers channel design, and the Clark Fork River flood control data manual, which is needed to make the design. The lawyer/mining engineer indicated that he plans to do the design. He indicated that he was a graduate mining engineer but not a registered professional engineer. The City Engineer recommended that the Ditch Company hire a competent civil engineer experienced in those type of designs. This civil engineer should be able to solve the problem much more timely and possibly provide a design, which would be more of a cost savings to the Ditch Company in the long run. The Ditch Company representatives then left with what we thought was to do the suggested engineering.

On Friday, August 3, 1973, the contractor for the Ditch Company resumed work without an approved design and the Ditch Company filed suit against the City of Missoula, the City Engineer and the City Aldermen on Monday, August 6, 1973.

The Montana Department of Natural Resources and Conservation, Mr. Ted Doney, was contacted for assistance. Senate Bill 444 was passed effective July 1, 1973, requiring a permit if the Ditch Company would change the entry from the river or the level of water to the ditch. We feel that a design is required to determine the effects of the proposed construction on the surrounding banks and flood control levees.

Prepared by,

Thomas N. Crowley

Thomas N. Crowley, P.E.
City Engineer

TNC/kw

In the District Court

OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF MONTANA
IN AND FOR THE COUNTY OF MISSOULA

CASE NO. ..... Civil No. .....

RICHARD HOLE[illegible] MEALY,
.....
.....
Plaintiff

vs.

THE CITY OF MISSOULA, a Municipal Corporation and TOM CROWLEY, City Engineer, and the Aldermen of City of Missoula,
.....
Defendant

SUMMONS

THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT.....:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, which is filed in the office of the Clerk of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the plaintiff..... attorney ..... within twenty days after the service of this Summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default, for the relief demanded in the Complaint.

Witness my hand and the seal of said Court, the 3rd day of Aug., 1923

(COURT SEAL) TITT & HOVER.

LEA D. LaFRINIERE
Clerk, District Court

By ....., Deputy Clerk

s/ Raymond Tapp
Attorney for Plaintiff
2200 Brooks
Missoula, Montana 59801

STATE OF MONTANA }
COUNTY OF MISSOULA } ss.

Office of Sheriff

I hereby certify, That I received this Summons on the ..... day of ....., 19.....
That I personally served this Summons on the ..... day of ....., 19.....,
upon ..... one of the defendants named therein, by delivering a copy of said Summons to ..... personally in the said County of Missoula.

That I personally served the within Summons on the ..... day of ....., 19.....
upon ..... one of the defendants named therein, by delivering a copy of said Summons to ..... personally in the said County of Missoula.

That I personally served the within Summons on the ..... day of ....., 19.....
upon ..... one of the defendants named therein, by delivering a copy of said Summons to ..... personally in the said County of Missoula.

That at a time when I served the within Summons upon the said .....
and at the same place I also served upon..... a copy of the Complaint upon which said Summons was issued, by delivering said copy ..... personally.

That the said .....
..... being ..... of the defendants named in the said Summons, are all residents of the said County, to-wit: the County of Missoula.

And, that after due and diligent search, and after making inquiry of divers persons in sundry places, I am unable to find, within the said County of Missoula.....
....., being ..... of the defendants named in the said Summons.

Service - - - $.....
Copy - - - - $.....
Mileage - - - $.....
Total Fees - $.....

....., Sheriff

By....., Undersheriff

62

DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
1519 ALASKAN WAY SOUTH
SEATTLE, WASHINGTON 98134

19 MAR 1973

NPSEN-DB-CP

Arwood D. Stickney, President
Orchard Homes Ditch Company
Post Office Box 342
Missoula, Montana 59801

Dear Mr. Stickney:

This is in reference to your 24 February 1973 letter to Mr. Thomas Crowley, Missoula City Engineer, requesting U.S. Army Corps of Engineers inspection of your weir and redesign of your irrigation system. Our Mr. Bickley discussed your problem with Mr. Crowley on 6 and 12 March 1973. Your letter indicated your weir is damaged, the river bottom eroded and your irrigation system not functioning properly.

We have no authorities which would allow us to participate in correction of your problems. The investigation and redesign should be made by a competent engineer familiar with river hydraulics and irrigation systems. Unfortunately we cannot provide engineering design services when the work does not qualify for correction under one of the authorities administered by us.

Should you decide to correct the problems, the finished project should be designed to avoid any further obstruction to the flow of the river than is now caused by the existing structure. We would appreciate the opportunity to comment on the effects any proposed changes or repairs could have on existing flood control structures in your area.

Please call Mr. Charles Bickley (206) 442-4024 if you have any questions regarding this matter.

Sincerely yours,

FREDERICK W. MUELLER, JR.
Lt. Colonel, Corps of Engineers
Acting District Engineer

Copy furnished:
Thomas N. Crowley, City Engineer
201 West Spruce Street
Missoula, Montana 59801

Orchard Homes Ditch Company
P. O. Box 342
Missoula, Montana 59801
February 24, 1973

Missoula City Engineer
Mr. Thomas N. Crowley
City Hall, 201 W. Spruce Street
Missoula, Montana 59801

Dear Sir:

We would like to request your assistance in securing the Corp of Engineers to come to Missoula and inspect our weir to determine the extent of damage done to the weir and the river bottom. Also, we would like to have their hydraulic engineer study our problem and give us a working system.

Time is an essence as the river is low at this time. This summer, from all indications of little snow in the hills, will be a low water year. THIS IS AN EMERGENCY SITUATION TO US NOW!

Sincerely,

Arwood D. Stickney

Arwood D. Stickney, President

Martin S. Behner

Martin S. Behner, Secretary

c.c. Project 4 Corp of Engineers

64

NAME Ted Lucas Bill No. SB 310

ADDRESS Highwood Date 3/11/75

WHOM DO YOU REPRESENT? Mont Stockgrowers Assn.

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Support as coming from Senate

Testimony on Senate Bill 3[illegible] Committee on Natural Resources
(Douglas Allen-Rancher-County Commissioner-Madison County)

Ex. 13

Considering the alternatives, and having participatedin the early drafting of Senate Bill 310, I am in favor of its passage. I have one suggestion, involving definitions, that I feel needs amendment. On page one, Section 3, part 1. "STREAM"-"Means any perennial flowing stream or river, its bed or immediate banks", I believe"immediate banks"should be more closely defined, to eliminate dispute, and I do not think that tiny streams, such as from springs, incapable of supporting fish life, should be included, even if perennially flowing, present water laws cover these all too well, and the Fish and Game should have no interest here. Otherwise, I am in favor of its passage as introduced. Any amendments, other than these could certainly change my stand. It has been prepared as a compromise between all parties involved. It allows the participation of the various interests concerned in the use and preservation of our streams. I am a strong advocate of free enterprise and the private ownership of land, and have syrong suspicions that some of those supporting previous legislation, notably HB 474 as introduced last session, are strong and violent enemies of private land ownership, and were using this bill to further this political philosophy. The ultimate goal of these people is communism and the public ownership of all land. It is not fair to say all who supported it have this objective, but they unwittingly aid it. The passage of laws to achieve their goal is an incipient method, out right revolution would be easier to cope with.

I can give general support to this bill, because it reduces the power of the agencies involved, most notably the Fish and Game Department. I am a firm believer in keeping control of our government in the hands of elected representatives of the people. This bill would also place fiscal responsibility for modifications on those who require it, if arbitration were to favor such modifications. I would prefer no laws controlling individuals right to use their private land, but feel this bill would protect them as much as any compromise among all parties could. Close observation of its effects should be made, if it becomes law, with an eye to revision or repeal, if the results are objectionable.

Douglas Allen
Silver Star, Montana

NAME Conrad B. Fredricks Bill No. SB 310

ADDRESS Big Timber, Montana Date 3/11/75

WHOM DO YOU REPRESENT? Sweet Grass Co. Preservation Assn.

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Amendments to SB 310

Explanation of Amend to SB 310

REPRODUCED FROM
DETERIORATING COP

Fredericks

AMENDMENTS TO SENATE BILL NO. 310

Amend Section 5 of the Senate Third Reading version of the bill as follows:

(1) Delete line 16, page 3, to line 11, page 4, inclusive, in its entirety, and substitute, in lieu thereof, the following:

> "(1) The supervisors shall receive all notices of proposed projects within their district. They shall, within five (5) days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a 'project', as defined in this act. They shall, within such period, send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a 'project', as defined in this act, the applicant may, ten (10) days after mailing of such determination to the applicant, proceed with the proposed activity.
>
> "(2) If the supervisors determine that the proposal is for a 'project', as defined in this act, the department shall, within five (5) days of receipt of such determination, notify the supervisors whether the department requests an on-site inspection by a team.
>
> "(3) The supervisors shall call a team together within ten (10) days of receipt of the request of the department for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans."

(2) Insert, at line 22, page 4, between the words "When" and "a", the following words: "any person who is eligible to be or is".

(3) At line 10, page 5, add the following words and punctuation: "If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of ten (10) days after receipt of the decision."

(4) Delete lines 20 and 21, page 5.

REPRODUCED FROM
DETERIORATING COPY

Amend Section 6 of the Senate Third Reading version of the bill at line 2, page 6, be deleting the period following the word "selection" and inserting in lieu thereof the following words and punctuation: "and shall be actively engaged in agribusiness."

Amend Section 8 of the Senate Third Reading version of the bill as follows:

(1) At line 17, page 6, after the word "crops", delete the comma and the words "during periods of emergency".

(2) At line 20, page 6, delete the words "an emergency" and insert, in lieu thereof, the words "this section".

(3) At line 2, page 7, delete the word "emergency" and, after the word "project", insert the words "described in the notice".

(4) Strike lines 3 through 22, inclusive, page 7, in their entirety, and insert, in lieu thereof, the following:

> "(4) If the person giving notification under this section shall again notify the supervisors, within a two (2) year period, of action taken to safeguard the same life or property, including growing crops, described in the preceding notice, the supervisors shall determine, by investigation, whether the subsequent action was necessitated by natural events or forces or whether it was necessitated by something which could be reasonably controlled by the intervention of man. If the supervisors find that such action was necessitated by something which could be reasonably controlled by the intervention of man, taking into consideration economic factors, the supervisors shall recommend to the appropriate person that such reasonable action be taken to preclude or diminish future threats to life or property, including growing crops. Such recommended action shall be exempt from the requirements and provisions of this act. If the persons giving a second notification hereunder is determined by the supervisors to be the appropriate person to take such reasonable action, failure of such person to take such reasonable action shall remove such person from the application of this section as to the same life or property, including growing crops. Failure of some other person to take such reasonable action as recommended by the supervisors shall not preclude a person giving second notification hereunder from taking future actions to safeguard life or property, including growing crops."

Amend Section 11 of the Senate Third Reading version of the bill, at line 3, page 9, by inserting, after the word and punctuation

REPRODUCED FROM DETERIORATING COPY

"culverts," the words and punctuation "irrigation headgates and diversions,".

Amend Section 13 of the Senate Third Reading version of the bill, at line 10, page 9, by striking the words "Except for emergency action" and inserting in lieu thereof the words "Except for actions taken as exempted by section (8 of this act)".

Indemnity

EXPLANATION OF AMENDMENTS TO SENATE BILL NO. 310

Section 5. It is felt that Section 5 has several deficiencies from the standpoint of ease of application and administration of the notice procedure. These include:

1. Although the section as amended provides for review of the notice by the supervisors upon receipt "to determine if the proposed project falls within the purposes set forth in section 2", there is no provision for the applicant to go ahead with the proposal if the proposal should be found not to be subject to the provisions of this act.

2. Although the department is required to notify the supervisors, within five days of the receipt of a notice, of the department's "interest in the project", there is nothing specified as to what happens if the department is not "interested" in the project nor if no prospective member of a team wishes to have an on-site inspection.

3. There is no provision for the supervisors to take any action in the event that no on-site inspection is requested.

4. There is no provision saying what happens if the team has no recommendations or if the supervisors approve the project without any recommendation or alternative plan.

The purpose of the proposed amendments is to clarify these problems. The supervisors make an immediate determination as to whether the project falls under the act. If it does not, the applicant can proceed. A team will be called for an on-site inspection only if requested by the department. The supervisors can act on the application if no on-site inspection is requested. If the project is approved as proposed, without recommendation for alteration, the applicant can proceed. The arbitration provision is still available

if any party disagrees with the supervisors.

Section 6. As the bill is presently written, there are no qualifications for the arbitration panel members, except that they be residents of the judicial district. Because the arbitration panel is going to be dealing with questions which will require a certain amount of expertise with respect to land and water use, it was felt necessary to have the panel members at least engaged in agribusiness, so that they would have at least some familiarity with agricultural problems.

Section 8. It is obvious that Section 8 has several deficiencies from the standpoint of ease of application and administration and also justice. These include:

1. It will be extremely difficult, if not impossible, to determine what is meant by "during periods of emergency". An "emergency" to one person might not be an "emergency" to another person. The water going down in a stream in the late summer, so that it will not go into a headgate, probably would not be considered an "emergency" by an employee of the Fish and Game Department, but would certainly be considered an "emergency" by the farmer or rancher who is watching his crops burn up from lack of irrigation.

2. There is no consideration given to the possibility that the problem which necessitated action is one which cannot be controlled by the intervention of man. Section 8, as written, seems to assume that there is a solution for all problems which might arise. Of course, this is erroneous.

3. There is no provision for taking economic factors into account in arriving at a solution. The most acceptable solution, from a team member's standpoint, might be one which entails the expenditure of

REPRODUCED FROM DETERIORATING COPY

vast quantities of money, which could be impossible from the applicant's standpoint.

4. There is no provision for taking into account the possibility that some person, other than the person giving notice, may be the person who should do something to avoid or mitigate the problem in the future. It may be that the problem is not caused by something on the land of the person giving notice, but may be caused by something on the land of his upstream neighbor. It seems unjust to penalize a person for not taking action which he cannot take, because the action should be taken by another person upstream.

The proposed amendments to Section 8 are intended to try to make provision for these problems. They would give more flexibility to this section and perhaps avoid locking someone into adopting a solution which might be detrimental to the stream to a greater extent than the action he took under this section.

Section 11. The purpose of this amendment is to clarify that minor alterations of streams also include minor headgates and irrigation diversions.

Section 13. A housekeeping amendment to be consistent with the amendments to Section 8.

NAME Norm Olsen Bill No. 310

ADDRESS Big Timber Mont. Date March 11-75

WHOM DO YOU REPRESENT? ~~Sweet Grass Co. Preservation assoc.~~

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: I'm resigned to live with the bill Providing the language can be cleaned up to definitely insure local supervisor participation

NAME Bill Baillie Bill No. SB310

ADDRESS 402 STRAW BLDG-Great Falls Date 3/11/75

WHOM DO YOU REPRESENT? Bill Baillie

SUPPORT _____ OPPOSE X AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Will send prepared statement - Wish to make oral statement in opposition to this bad legislation

NAME Bob Shiplett. Bill No. SB316

ADDRESS Shields Route Livingston Date March 11-75

WHOM DO YOU REPRESENT? My Ranch.

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This restricts ranchers and makes it more expensive, more difficult to produce food - the biggest need there is.

EX. 16

NAME Robert LANE Bill No. SB-310

ADDRESS Three Forks Mt. Date 3-11-75

WHOM DO YOU **REPRESENT?** _____

SUPPORT _____ **OPPOSE** _____ AMEND X

PLEASE LEAVE **PREPARED STATEMENT** WITH SECRETARY.

Comments:

I agree in principle with the intentions of SB-310. My reservations are that who or what criteria will be used to determine what is major and what is ~~as~~ minor job. Also from past experience the Fish and Game has never concurred on any job I have done in the past, done in accordance of ~~spec~~ specifications of S.C.S. Under provisions of this bill it appears if jobs done in past would be classified as major we would be in litigation each time.

Ex. 17

STATE OF MONTANA

DEPARTMENT OF

FISH AND GAME

Route 3, Box 274
Bozeman, Montana 59715

March 19, 1974

Bob Lane

Harry A. Corry
Soil Conservation Service
Box 1017
Bozeman, Montana 59715

Dear Harry:

This will confirm our inspection of proposed bank work on the Jefferson River in T1N, R1W, S7 and T2N, R1W, S28. The owner of the adjoining land is Mr. Bob Lane.

The first area that we inspected was a 350 foot section of bank along a narrow strip of land between the river and the old Highway #10. This area would be shaped and rip-rapped to provide a livestock watering facility. It was not clear at the inspection how the construction would be accomplished to provide for use by cattle.

The channel along much of this proposed treatment area provides good cover for game fish. This includes both deep-water areas and debris that has either collected naturally or has been placed for bank protection. Shaping and rip-rapping as proposed will reduce the fishery potential in this 350 foot section. It is our understanding that this job would be accomplished under RE9 (Streambank Stabilization). Does development of livestock water facilities qualify under that practice?

The second site was a 550 foot section of bank that would be rip-rapped to prevent lateral movement of the channel and to prevent high water from flowing through a brushy area northeast of the site.

The description of RE9 that was included in the national guidelines for the RECP program indicates that cost sharing for streambank stabilization would be authorized on an individual ranch only if the entire problem area is located thereon and the practice will effectively treat the problem without the need for the same practice on nearby or adjacent land on other farms. The area immediately upstream from the proposed site has had rock placed upon it for some form of bank stabilization and other nearby portions of the Jefferson show a similar tendency toward lateral channel migration. This is the normal erosion-deposition pattern of a river and it appears unlikely that rip-rap on a 550 foot section would significantly alter the tendency of this river to

meander. Therefore, it appears to us that projects such as this do not meet the intent of the practice description in the national guidelines.

Thank you for the opportunity to review this project proposal.

Sincerely,

LEROY ELLIG
REGIONAL COORDINATOR

John J. Gaffney

By: John J. Gaffney
Regional Fisheries Manager

JJG:plj

cc: R. Boland

Some of the amendments and [illegible] change the bill that much and the concept not at all.

Specific Criticism of SB 310 PROVIDING FOR PRESERVATION OF NATURAL SHAPE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS. Ex. 18

Title, Sec. 1 and Sec. - the natural state does not protect nor preserve. We know nature is destructive as the Yellowstone flooding last year, so how can leaving it in natural state protect it?

Sec. 3 #5 - such a broad definition of 'project' means not a stone could be moved.

Sec. 3 #7 - F & G nor any state dept. should not have authority over private rights nor over agriculture to restrict it. Ranchers must be allowed to make their own decisions which often have to be immediate ones, because they know best what is needed.

Sec 4 #3 - notice of 21 or 45 days would be a hardship.

Sec. 5 #3 - any panel with a state Dept. on it does not consider the cost to the individual in their 'plans'. (From our talks with the F & G they are completely unrealistic, such as stating that there should be no flood irrigation, everyone should have sprinkler systems. This would not only be prohibitive to many, but also unworkable to many and there is also the energy cost and shortage involved.) By the time all necessary actions are taken, the damage is done or the crops are gone.

Sec. 6 - any costs involved in such a bill should be borne by F & G.

Sec. 7 - preserving vested water rights mean nothing if a person can't get the water out of the stream.

Sec. 12 - there should be no public nuisance clause any more than we should declare parking meters or F. & G surveillance a public nuisance.

Sec. 14 - there should be no penalty, misdemeanor or otherwise declared for that which should not be considered a crime.

In my estimation, this is not local control. I cannot support the concept of this bill, because it does not protect nor preserve either the stream, the banks, nor private rights.

As far as I'm concerned, the problem has not been analyzed, so how can a bill provide a solution? We know there are some problems, some practices that should be discontinued, but control by any state or federal department is not the answer. There has never been any release of figures on how much extra it costs to have the highway department under F & G for stream preservation and both are on our tax money. Private property infringement is our own expense, on top of the extra taxes we are paying for the present law. I DON'T BELIEVE IN LEGISLATION TO SIMPLY CONTROL INSTEAD OF SOLVING PROBLEMS. I also don't believe in restricting and regulating as important a segment as agriculture to promote a special interest group that is for recreation that only benefits the few with time and money who can enjoy it.

Virge Holliday and we own a ranch in Park County with the Shields River running full length through it.

Rte. 3
Wilsall, Montana

Virge Holliday

Ex. 19

american fisheries society

MONTANA CHAPTER
3004 Park
Missoula, Montana 59801
February 7, 1975

Representative Dorothy Bradley
Montana House of Representatives
Natural Resources Committee
Helena, Montana 59601

Dear Representative Bradley:

The Montana Chapter of the American Fisheries Society supports the principle of SB 310 which provides for an evaluation of all stream alteration projects.

Montanas' fisheries depend on the amount of water and fish habitat available. Removal or destruction of fish habitat will only serve to decrease the populations existing today.

Recreational demands on our fisheries continues to grow annually. If we are to maintain these fisheries for future generations to enjoy, we must strive to maintain or enhance the requirements for survival.

We believe SB 310 is a necessary step toward providing the protection needed.

In order to save postage, we have enclosed additional copies of this letter for distribution to members of your committee. Please excuse this rather unethical approach, as we certainly apologize for any inconvenience we may have caused you.

Sincerely,

Gordon N. Haugen RLD

Gordon N. Haugen,
President-Elect

NAME Walter Steingruber Bill No. ____

ADDRESS Willow Creek, Mt. Date 3/14/75

WHOM DO YOU **REPRESENT?** myself

SUPPORT ____ **OPPOSE** ____ AMEND X

PLEASE LEAVE **PREPARED STATEMENT WITH** SECRETARY.

Comments: Would recomend you consider Mr. Fredricks amendments which I support.

Thank you.

EX. 1

SUBCOMMITTEE AMENDMENTS TO SENATE BILL NO. 310--March 17

1. Amend page 2, section 3, subsection (5), line 21.
Following: "a"
Strike: "MAJOR"

2. Amend page 2, section 3, subsection (5), lines 24 and 25; and on page 3, line 1.
Following: "this act]"
Strike: The remainder of subsection (5) in its entirety.

3. Amend page 3, section 5, subsections (1), (2), and (3), lines 16 through 25; and on page 4, lines 1 through 11.
Strike: All of subsections (1), (2) and (3).
Insert: The following three new subsections (1), (2) and (3).
"(1) The supervisors shall receive all notices of proposed projects within their district. They shall, within five (5) days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a 'project', as defined in this act. They shall, within such period, send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a 'project', as defined in this act, the applicant may, ten (10) days after mailing of such determination to the applicant, proceed with the proposed activity unless a team member requests arbitration as provided for in section 6 of this act.

(2) If the supervisors determine that the proposal is for a 'project', as defined in this act, the department shall, within five (5) days of receipt of such determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within twenty (20) days of receipt of the request of the department for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans."

4. Amend page 5, section 5, subsection (7), line 10.
Following: "members."
Insert: "If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of ten (10) days after receipt of the decision."

5. Amend page 8, section 11, subsection (2), lines 22 through 25 and on page 9, lines 1 through 5.
Strike: Subsection (2) in its entirety.
Insert: "(2) By January 1, 1976, the supervisor of each district shall adopt by resolution after a public hearing rules setting standards and guidelines for projects within their districts which shall meet or exceed the minimum standards set by the board under subsection (1) of this section."

March 18, 1975

The Natural Resources Committee convened in room 437 at 10:40 a.m. on March 18, 1975, with Chairman Bradley presiding and a quorum present for an executive session on the following bills. Rep. Fishbaugh was excused.

Chairman Bradley mentioned that she planned to further amend SB 92 on the floor as the Land Department had stressed the need to amend the time needed to make a finding from 30 days to 90 days. This bill had been amended and concurred in by the committee on March 15.

SB 338 Rep. Day moved that SB 338 be concurred in. Motion carried unanimously with those present. Absent were Reps. Kemmis, Barrett, Jim Moore, Jack Moore; absent but leaving a written request to be voted aye were Reps. Fishbaugh and Richards. Rep. Day will carry this bill on the floor.

SB 395 The subcommittee has not met and it was recommended by the Chairman that they do meet and look over the Fish and Game amendments.

SB 374 Rep. Shelden moved be concurred in. Rep. Quilici wondered why the Bureau of Mines wasn't selected to undertake the study. It was felt they probably would end up with the contract to do the study. The motion carried unanimously. Reps. Fishbaugh, Richards and Kemmis had left a written request to have their votes case as aye. Reps. Jim Moore, Barrett and Jack Moore were absent. Chairman Bradley will carry this bill on the floor.

SB 310 Rep. Shelden, the subcommittee chairman, said the first amendment had been accepted by the committee at a previous meeting. He read the second amendment (amendments are exhibit 1) and said this would remove the exclusions that proved a problem with the last discussion on the bill. This would leave exclusions up to the local supervisors in their local regulations. Rep. Shelden moved it be adopted--Ellison and Schye voted no; absent were Barrett, Kemmis, Jack Moore, Jim Moore, Fishbaugh and Richards; motion carried. Rep. Shelden read the fourth amendment and moved it be accepted and the motion carried unanimously, same absent as prior amendment. He then read the fifth and moved its acceptance which also carried unanimously with those present. Rep. Shelden then moved that as so amended SB 310 be concurred in. Rep. Schye questioned whether there would be anyone in the agency capable and qualified to handle this bill--stating some hydraulic engineers were needed. He said the SCS do a good job but need help. Rep. Quilici stated the bill has been worked on all through the summer by the ranchers and sportsmen and is needed. Rep. Day, Rep. Shelden and Rep. Anderson all stated confidence in the SCS and that while the bill is not a cure-all, it is at least a start. A roll call vote was taken and the motion carried with Rep. Schye voting no; absent being Reps. Fishbaugh, Barrett, Jack Moore; absent but leaving a request to be voted aye were Richards, Jim Moore, Huennekens. Rep. Shelden will carry the bill on the floor.

SB 332 Rep. Meloy said there was a question of constitutionality--that the amendments have changed the intent of the bill. Rep. Richards moved

SENATE BILL NO. 310

INTRODUCED BY GREELY, HAZELBAKER, TOWE, FASBENDER, TURNAGE, REGAN, ROBERTS, MURPHY, LYNCH, WATT, WARDEN, SEIBEL, DEVINE, HEALY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A POLICY OF PRESERVING THE NATURAL OR EXISTING SHAPE, FORM AND COURSE OF STREAMS TO ACTIVITIES OF PRIVATE PERSONS OR ORGANIZATIONS; AND IN SO DOING TO KEEP SOIL EROSION AND SEDIMENTATION TO A MINIMUM IN THE STATE OF MONTANA; AND TO PROVIDE FOR PENALTIES AND ENFORCEMENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as "The Natural Streambed and Land Preservation Act of 1975".

Section 2. Policy of state. It is the policy of the state of Montana that its natural rivers and streams, and the lands and property immediately adjacent to them within the state are to be protected and preserved to be available in their natural, or existing state, and to prohibit unauthorized projects and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. FURTHER, IT IS THE POLICY OF THIS STATE ~~TO PROTECT--LAND--AND--PROPERTY--FROM--STREAM--MEANDERING---AND FLOODING;~~ TO RECOGNIZE THE NEEDS OF IRRIGATION AND AGRICULTURAL USE OF THE RIVERS AND STREAMS OF THE STATE OF MONTANA; AND TO PROTECT THE USE OF WATER FOR ANY USEFUL OR BENEFICIAL PURPOSE AS GUARANTEED BY THE CONSTITUTION OF THE STATE OF MONTANA.

Section 3. Definitions. ~~as~~ AS used in this act:

(1) "Stream" means any NATURAL perennial flowing stream, or river, its bed and immediate banks.

(2) "Person" means any natural person, corporation, firm, partnership, association or other legal entity, not covered under section 26-1502.

(3) "District" means a conservation district under Title 76, chapter 1, in which the project will take place; a grass conservation district, under Title 46, chapter 23, where no conservation district exists; or the board of county commissioners where a district does not exist.

(4) "Supervisors" means the board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district.

(5) "Project" means a ~~MAJOR~~ physical alteration or modification of a stream in the state of Montana which results in a change in the state of the stream in contravention of section [2 of this act]~~, BUT DOES NOT INCLUDE--MINOR--ALTERATIONS--NECESSARY--FOR--THE---USE---AND~~

REFERENCE BILL

~~PROTECTION OF ADJACENT LANDS~~.

(6) "Applicant" means any person presenting notice of a project to the supervisors.

(7) "Department" means the Montana department of fish and game.

(8) "Team" means one (1) representative of the supervisors, one (1) representative of the department, and the applicant or his representative.

Section 4. Notice of project. (1) A person planning to engage in a project shall present written notice of the project to the supervisors before any portion of the project takes place.

(2) The notice shall include the location, general description, and preliminary plan of the project.

Section 5. Procedure for considering projects -- team. ~~(1) The supervisors shall receive all notices for projects within their district and shall send, within five (5) days of receipt, one (1) copy to the department. The department shall notify, within five (5) days of receipt of notice, the supervisors of their interest in the project.~~

~~(2) The supervisors shall promptly examine and investigate each notice of a proposed project received under the provisions of this act~~ TO DETERMINE IF THE PROPOSED PROJECT FALLS WITHIN THE PURPOSES SET FORTH IN SECTION 2. ~~If the supervisors determine the plans and specifications~~

~~furnished with the notice to be technically insufficient, the supervisors shall notify the applicant, and they may render aid in preparing other plans and specifications.~~

~~(3) The supervisors shall call the team together within twenty (20) days of receipt of notice, at their request or at the request of the department or the applicant for an on-site inspection. Any member of the team shall notify the supervisors in writing within five (5) days after notice of the call for an inspection of his waiver of participation in the inspection or the preparation of the plan.~~

(1) THE SUPERVISORS SHALL RECEIVE ALL NOTICES OF PROPOSED PROJECTS WITHIN THEIR DISTRICT. THEY SHALL, WITHIN FIVE (5) DAYS OF RECEIPT OF A NOTICE, EXAMINE AND INVESTIGATE THE NOTICE AND DETERMINE WHETHER THE PROPOSAL IS FOR A PROJECT. THEY SHALL, WITHIN SUCH PERIOD, SEND A COPY OF THEIR DETERMINATION TO THE DEPARTMENT AND THE APPLICANT. IF THE SUPERVISORS DETERMINE THAT THE PROPOSAL IS NOT A PROJECT, THE APPLICANT MAY, TEN (10) DAYS AFTER MAILING OF SUCH DETERMINATION TO THE APPLICANT, PROCEED WITH THE PROPOSED ACTIVITY UNLESS A TEAM MEMBER REQUESTS ARBITRATION AS PROVIDED FOR IN SECTION 6 OF THIS ACT.

(2) IF THE SUPERVISORS DETERMINE THAT THE PROPOSAL IS FOR A PROJECT, THE DEPARTMENT SHALL, WITHIN FIVE (5) DAYS OF RECEIPT OF SUCH DETERMINATION, NOTIFY THE SUPERVISORS

WHETHER THE DEPARTMENT REQUESTS AN ON-SITE INSPECTION BY A TEAM.

(3) THE SUPERVISORS SHALL CALL A TEAM TOGETHER WITHIN TWENTY (20) DAYS OF RECEIPT OF THE REQUEST OF THE DEPARTMENT FOR AN ON-SITE INSPECTION. ANY MEMBER OF THE TEAM SHALL NOTIFY THE SUPERVISORS IN WRITING WITHIN FIVE (5) DAYS AFTER NOTICE OF THE CALL FOR AN INSPECTION OF HIS WAIVER OF PARTICIPATION IN THE INSPECTION. IF THE DEPARTMENT DOES NOT REQUEST AN ON-SITE INSPECTION WITHIN THE TIME SPECIFIED ABOVE, THE SUPERVISORS MAY DENY OR APPROVE THE PROJECT OR MAY MAKE RECOMMENDATIONS FOR ALTERNATIVE PLANS.

(4) Each member of the team shall recommend, in writing, within fifty (50) days of date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations, and notify the applicant and team members within sixty (60) days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within five (5) days of receipt of the supervisors' decision, that an arbitration panel, as provided in section [6 of this act] be appointed

to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with any recommendation or alternative plan, by the supervisors to the applicant, the applicant, within fifteen (15) days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project prior to the expiration of this fifteen (15) day period unless written permission is given by all team members. IF THE WRITTEN DECISION OF THE SUPERVISORS APPROVES THE PROPOSED PROJECT WITHOUT RECOMMENDATION OR ALTERNATIVE PLAN, THE APPLICANT MAY PROCEED WITH THE PROJECT UPON THE EXPIRATION OF TEN (10) DAYS AFTER RECEIPT OF THE DECISION.

(8) The supervisors may extend the request of any team member, the time limits provided in section [5 (4) and (5) of this act] where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed one (1) year from date of application. The applicant shall be notified, within sixty (60) days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors.

Section 6. Arbitration panel -- costs. (1) The arbitration panel shall consist of three (3) ~~nonpartisan~~ members chosen by the senior judge of the judicial district in which the dispute takes place. The members shall be residents of that judicial district at the time of selection. This panel shall sit for only that period of time necessary to settle the dispute before it AND WILL REVIEW THE PROPOSED PROJECT IN LINE WITH THE POLICY SET FORTH IN SECTION 2.

(2) Cost of the arbitration panel, computed as for jurors' fees under section 25-401, shall be borne by the contesting party or parties; all other parties shall bear their own costs.

Section 7. Vested water rights preserved. This act shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States.

Section 8. Emergencies -- procedure. (1) The provisions of this act shall not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for any project under this section shall notify the supervisors in writing within fifteen (15) days of the action taken as a result of an emergency.

(2) The supervisors shall send one (1) copy of the

notice, within five (5) days to the department.

(3) A team, called together as described in section [5 (3) of this act], shall make an on-site inspection and individual written reports to the supervisors within thirty (30) days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within any five (5) year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to that emergency action.

(5) The supervisors shall determine the feasibility of ~~the~~ A more permanent solution ~~ascertained--by-each-team member,~~ and ~~select-the-most-feasible.--They~~ shall recommend, within thirty (30) days, that the person put the ~~selected~~ solution into effect within a reasonable period of time, as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in section [6 of this act], be appointed to hear the dispute and make a final

written decision thereon.

Section 9. Modification of plan -- cost sharing. If the final decision of the arbitration panel requires modifications or alterations from the original project plan, as approved by the supervisors, then the arbitration panel shall include in its decision any part or percent of these modifications or alterations that is for the direct benefit of the public and it shall assign any costs to the proper participant.

Any of the involved entities may withdraw or modify required modification of the project within ten (10) days after the decision.

Section 10. Application of flood plain management act. Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 89, chapter 35, floodway management and regulation where designated flood plains or designated floodways have been established in accordance with that chapter.

Section 11. Rules -- minimum standards. (1) By July 1, 1975, the board of natural resources and conservation ~~in cooperation~~ AFTER CONSULTATION with the ~~state fish and game commission~~ ASSOCIATION OF CONSERVATION DISTRICTS shall adopt rules setting minimum standards and guidelines for the purposes of this act.

~~(2) By January 1, 1976, the supervisors shall adopt, by resolution and after a public hearing, rules and standards for the review and approval of a project which shall meet or exceed the minimum standards set by the board under subsection (1) of this section AND SET STANDARDS AND EXCLUSIONS FOR MINOR ALTERATIONS OF STREAMS SUCH AS INSTALLATION OF CULVERTS, BRIDGES, MACHINERY CROSSINGS, SNAGGING AND OTHER SIMILAR MINOR ALTERATIONS AND MODIFICATIONS WITHIN THEIR DISTRICTS.~~

(2) BY JANUARY 1, 1976, THE SUPERVISORS OF EACH DISTRICT SHALL ADOPT BY RESOLUTION AFTER A PUBLIC HEARING RULES SETTING STANDARDS AND GUIDELINES FOR PROJECTS WITHIN THEIR DISTRICTS WHICH SHALL MEET OR EXCEED THE MINIMUM STANDARDS SET BY THE BOARD UNDER SUBSECTION (1) OF THIS SECTION.

Section 12. Judicial review. Any final action under this act may be appealed within thirty (30) days to the district court. ~~as provided in the Montana Administrative Procedure Act.~~

Section 13. Public nuisance. Except for emergency action, ~~stream channel activity~~ A PROJECT engaged in by any person without prior approval, as prescribed in this act, is declared a public nuisance and subject to proceedings for immediate abatement.

Section 14. Penalty -- misdemeanor -- restoration.

(1) Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500), for each day that person continues to physically alter or modify the stream, and in addition that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible.

(2) Any person or entity who violates the time provisions of this act is guilty of a misdemeanor and upon conviction shall be punished by a fine of five dollars ($5) per day.

Section 15. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-